The North Atlantic Treaty Organization Legal Advisor: A Primer

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I. Introduction

A lawyer who provides legal advice to a North Atlantic Treaty Organization (NATO) client is known as a legal advisor (LEGAD).[1] United States judge advocates perform duty as LEGADs and occupy key NATO crisis establishment posts, advising clients who execute NATO-led operations in Afghanistan, the Balkans, and other contingencies.[2] Additionally, judge advocates serve in NATO permanent establishment posts where they supervise other NATO legal personnel.[3] Outside of NATO, U.S. judge advocates deliver legal advice to U.S. commanders with responsibility for the support of geographically dispersed U.S. personnel who fill NATO posts.[4] U.S. judge advocates coordinate opportunities for NATO exercises and training events for augmentees and units identified for transfer to NATO operations.[5] Recently, senior U.S. judge advocates have commanded a NATO unit in Afghanistan.[6] Consequently, U.S. judge advocates, whatever their assignment, need to know more about NATO and the LEGAD function.

Preparation for duty in a NATO assignment can be frustrating.[7] Judge advocates, particularly augmentees to NATO billets, are unlikely to receive funding to attend exercises or training enroute to their assignments. Compounding this frustration, NATO references are not readily accessible to non-NATO personnel.[8] The majority of NATO documents can only be accessed from NATO's Document Handling System, which is generally restricted to those with computer access to NATO's electronic domain. Even when available, what publications are relevant? While the most useful primer on NATO is the NATO Legal Deskbook, it is practically unavailable outside of NATO.[9] Existing U.S. materials do not provide extensive insight into NATO's operations or day-to-day LEGAD practice.[10] So

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[1] ALLIED ADMIN. PUB. (AAP) 15, NATO GLOSSARY OF ABBREVIATIONS USED IN NATO DOCUMENTS AND PUBLICATIONS, at C-17 (23 Feb. 2013) [hereinafter NATO GLOSSARY], *available at* http://nsa.nato.int/zPublic/ap/aap15/aap-15.pdf (including both English and French abbreviations and acronyms).

[2] The senior lawyer advising the NATO-led International Security Assistance Force (ISAF) is an Army judge advocate; the senior lawyer who advises ISAF's operational headquarters, the ISAF Joint Command (IJC), is also a U.S. Corps-level Staff Judge Advocate (SJA); the LEGADs for each of ISAF's Regional Commands East, South, and Southwest are also U.S. divisional-level SJAs. The Deputy LEGAD for Kosovo Force (KFOR) is a U.S. judge advocate. Recently, Army judge advocates have been assigned to NATO's Land Component Command in Izmir, Turkey, and the German-Netherlands Corps, Muenster, Germany. In 2011, U.S. judge advocates (U.S. Air Force) were temporarily assigned to the Combined Air Operations Center (CAOC) in Italy to provide NATO targeting support to NATO's *Operation Unified Protector* (Libya). Judge advocates who practice as LEGADs range in rank from lieutenant to colonel. *See generally* JUDGE ADVOCATE GEN.'S CORPS PERSONNEL DIRECTORY (Oct. 2012); *see also* JUDGE ADVOCATE GEN.'S CORPS QUILL AND SWORD NO. 29, ASSIGNMENTS, Winter 2012.

[3] A U.S. judge advocate serves as senior LEGAD to Allied Joint Force Command Naples (one of two of NATO's operational level commands; the equivalent of a combatant command) and supervises an international staff, including NATO International Civilians and non-U.S. judge advocates.

[4] *See generally U.S. Army NATO Brigade History*, U.S. ARMY NATO BRIGADE, http://www.usanato.army.mil/sites/programs/unithistory/index.html (last visited Oct. 15, 2013) ("United States Army NATO was established by General Order #46, effective 20 December 1950 . . . the Command has evolved into providing superlative support to nearly 1300 soldiers and civilians and 1500 family members throughout NATO."). *Id.*

[5] U.S. judge advocates provide legal support to NATO exercise and training centers and NATO-accredited schools such as the Joint Warfare Centre (JWC) in Stavanger, Norway, and the NATO School at Oberammergau, Germany.

[6] *See generally* Jack Goldsmith, *ROLFF-A Gets a Boost from NATO*, LAWFARE (Jun. 9, 2011), http://www.lawfareblog.com/2011/06/rolff-a-gets-a-boost-from-nato/. The NATO Rule of Law Field Support Mission has been commanded by four judge advocates: Brigadier General Mark Martins, Rear Admiral James Crawford, Brigadier General Ural Glanville, and Brigadier General Patrick Reinert.

[7] As part of the author's duties in preparing personnel for deployment to NATO posts at ISAF as augmentees, he was frequently disappointed to learn that national fiscal constraints or conflicting duties prevented attendance at NATO-mandated predeployment training. For example, the past two senior LEGADs for ISAF who deployed as augmentees did not attend NATO predeployment training before assuming their posts as NATO's senior lawyers in theatre. Until about 2012, neither of the U.S. predeployment platforms, the CONUS Replacement Center (CRC) and Theater Specific Individual Requirements Training (TSIRT), covered NATO-specific training such as escalation of force training.

[8] The NATO Standardization Agency (NSA) publishes unclassified NATO documents approved by NATO nations under standardization agreement (STANAG) and is available at http://nsa.nato.int/nsa/nsdd/listpromulg.html.

[9] OFFICE OF THE LEGAL ADVISER, ALLIED COMMAND TRANSFORMATION, STAFF ELEMENT EUROPE, NATO LEGAL DESKBOOK (2d. 2010) [hereinafter NATO LEGAL DESKBOOK] (copy on file with author).

[10] *See, e.g.*, CTR. FOR LAW & MILITARY OPERATIONS, THE JUDGE ADVOCATE GEN.'S LEGAL CTR. & SCH., U.S. ARMY, JA 422, OPERATIONAL LAW HANDBOOK ch. 23, at 519–22 (2011). Only three pages are devoted to

how can the judge advocate prepare for duty as a LEGAD? This article provides some insight into NATO, its legal authorities, structure, and the practice of law as a LEGAD.

II. NATO Legal Authority

The North Atlantic Treaty Organization is a creation of international agreement. A mosaic of international agreements establishes the NATO Alliance, states its mission, and grants privileges and immunities to its subordinate elements. The next section provides an overview of some of these key agreements.

A. North Atlantic Treaty of 1949

The North Atlantic Treaty, also known as the Washington Treaty, establishes NATO legal authority, organization, and function.[11] NATO is both a political entity and a military entity. NATO's political leader is the Secretary General (currently Mr. Anders Fogh Rasmussen, a Danish citizen), while its military leader is the Supreme Allied Commander Europe (SACEUR) (currently U.S. Air Force General Philip M. Breedlove). The treaty establishes both a political and military role for the organization.

1. Core Mission and Article 5

Article 5 of the treaty states the core mission of NATO.[12] This mission is based upon article 51 of the UN Charter, which provides for collective self-defense. Article 5 states as follows:

> The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defense recognized by article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area.[13]

NATO invoked the provisions of article 5 to the treaty for the first time in the aftermath of the 11 September 2001 attacks on the United States.[14] NATO Operation Active Endeavor (naval operations in support of 9/11 counterterrorism missions in the Mediterranean) was one of the first NATO operations authorized under article 5.[15]

2. Non-Article 5 Activity

Not all NATO military activity can be justified under article 5 to the treaty. NATO member states[16] have an obligation to train and prepare for their defense. This is articulated in article 3 to the treaty.[17] The political aspect of NATO is reflected in the article 4 requirement that parties consult one another to resolve disputes or identify potential threats to the alliance.[18] These authorities have been

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NATO, and only six pages discuss multinational operations under which NATO operations also fall.

[11] North Atlantic Treaty, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243 (entered into force Aug. 24, 1949) [hereinafter North Atlantic Treaty], *available at* http://www.nato.int/cps/en/natolive/official_texts_17120.htm.

[12] *Id.* art. 5.

[13] *Id.*

[14] *What is NATO?, Key Events, 2001,* NORTH ATLANTIC TREATY ORGANIZATION, http://www.nato.int/nato-welcome/index.html (last visited 22 October 2013) ("Large-scale terrorist attacks in New York and Washington D.C. NATO invokes Article 5 for the first time ever and adopts a broader approach to security.").

[15] *NATO A-Z, Operation Active Endeavour*, NORTH ATLANTIC TREATY ORGANIZATION (June 21, 2013), http://www.nato.int/cps/en/natolive/topics_7932.htm?selectedLocale=en:

> The deployment was one of eight measures taken by NATO to support the United States in the wake of the terrorist attacks of 11 September 2001, following the invocation of Article 5, NATO's collective defence clause, for the first time in the Alliance's history.
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> The deployment started on 6 October and was formally named Operation Active Endeavour on 26 October 2001. Together with the dispatch of Airborne Warning and Control System (AWACS) aircraft to the United States, it was the first time that NATO assets had been deployed in support of an Article 5 operation.

Id.

[16] NATO member states are the following: Albania, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Turkey, United Kingdom, and United States. *NATO Member Countries*, NORTH ATLANTIC TREATY ORGANIZATION (Apr. 9, 2013), http://www.nato.int/cps/en/nato-live/nato_countries.htm.

[17] North Atlantic Treaty, *supra* note 11, art. 3 ("In order more effectively to achieve the objectives of this Treaty, the Parties, separately and jointly, by means of continuous and effective self-help and mutual aid, will maintain and develop their individual and collective capacity to resist armed attack.").

[18] *Id.* art. 4 ("The Parties will consult together whenever, in the opinion of any of them, the territorial integrity, political independence or security of any of the Parties is threatened.").

interpreted to give NATO its own engagement activity (mirroring the activity of a U.S. combatant command), such as the Partnership for Peace and the Mediterranean Dialogue.[19] While article 5 is a good start point in articulating the legal basis for traditional NATO operations, the LEGAD may also refer to underlying United Nations Security Council Resolutions (UNSCR) giving authority to engage in armed conflict under Chapter VII of the UN Charter.[20] In this light, NATO doctrine provides for operational responses beyond article 5 self-defense.

To address the multitude of security scenarios facing the alliance, NATO doctrine recognizes a category of activity known as Non-Article 5 Crisis Response Operations (NA5CRO).[21] Non-Article 5 operations cover contingencies that do not amount to a response to an armed attack on alliance territory.[22] The earliest example of this type of operation includes the NATO-lead of the Implementation Force (IFOR) in Bosnia-Herzegovina.[23] The doctrine states as follows:

> NA5CRO range from support operations primarily associated with civil agencies through operations in support of peace, countering irregular threat activities, to combat . . . this could include, but is not limited to, extraction operations, tasks in support of disaster relief and humanitarian operations, search and rescue (SAR) or support to non-combatant evacuation operations (NEOs), freedom of navigation and overflight enforcement, sanction and embargo enforcement, support to stabilization and reconstruction activities, peace enforcement (PE), and counterinsurgency (COIN).[24]

3. Organizational Authority Under Article 9

The North Atlantic Treaty establishes the North Atlantic Council (NAC).[25] All NATO entities owe their base authority to some action taken by the NAC. As part of NATO's basic functions, the NAC establishes subsidiary bodies which include political, military, and other organizational entities within NATO. On the military side, the NAC established the Military Committee (MC), which provides direction and guidance on military policy and strategy.[26] The MC is supported by its International Military Staff (IMS). Among other things, the NAC approves rules of engagement (ROE) and target lists for specified NATO operations.[27]

The NAC is chaired by the Secretary General of NATO (Mr. Anders Fogh Rasmussen), who builds consensus within this political and military body. The Secretary General is supported by the International Staff (IS) who works NATO's political agenda.

The NAC is also empowered to establish a form of subsidiary body that is now known as a NATO Agency.[28] NATO Agencies are the executive body within a subsidiary

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[19] *NATO A–Z, Partnerships: A Cooperative Approach to Security,* NORTH ATLANTIC TREATY ORGANIZATION (20 Mar. 2013), http://www.nato.int/cps/en/natolive/topics_84336.htm?.

> Over the past two decades, the Alliance has developed a network of structured partnerships with countries from the Euro-Atlantic area, the Mediterranean and the Gulf region, as well as individual relationships with other partners across the globe. Today, NATO pursues dialogue and practical cooperation with 41 partner countries and engages actively with other international actors and organisations on a wide range of political and security-related issues.

Id.

[20] *See, e.g.*, S.C. Res. 1386, U.N. Doc. S/RES/1386 (20 Dec. 2001) (authorizing a chapter VII action in Afghanistan); *see also* S.C. Res. 1776, U.N. Doc. S/RES/1776 (19 Sept. 2007) (explicitly recognizing NATO's lead of ISAF which had previously been led by nations on a rotational basis since 2001). NATO has led ISAF since August 2003.

[21] ALLIED JOINT PUB. 3.4A, ALLIED JOINT DOCTRINE FOR NON-ARTICLE 5 CRISIS RESPONSE OPERATIONS (15 Oct. 2010) [hereinafter AJP 3.4A], *available at* https://clovis.hq.nato.int/RC/Basic%20documents/,DanaInfo=clovis.hq.nato.int+AJP_3_4_A.pdf (login and password required).

[22] *Id.* ch. 1, para. 0104b(2).

[23] General Framework Agreement for Peace in Bosnia and Herzegovina, Annex 1-A, Agreement of the Military Aspects of the Peace Settlement, 35 I.L.M. 75 (Nov. 21, 1995).

[24] AJP 3.4A, *supra* note 21, ch. 1, para. 0104b(2); *see also* Major J.D. Godwin, *NATO's Role in Peace Operations: Reexamining the Treaty After Bosnia and Kosovo*, 160 MIL. L. REV. 1 (1999) (examining implications for the future of NATO out of sector in light of its 1990s-era operations and Article VIII of the UN Charter).

[25] North Atlantic Treaty, *supra* note 11, art. 9 ("The Parties hereby establish a Council, on which each of them shall be represented, to consider matters concerning the implementation of this Treaty. The Council shall be so organized as to be able to meet promptly at any time. The Council shall set up such subsidiary bodies as may be necessary; in particular it shall establish immediately a defense committee which shall recommend measures for the implementation of Articles 3 and 5.").

[26] *Id.*

[27] ALLIED JOINT PUB., AJP-01(D), ALLIED JOINT DOCTRINE (STANAG 2437) para. 0306b, ch. 3 (Dec. 21, 2010) [hereinafter AJP-01(D)], *available at* http://nsa.nato.int/nsa/zPublic/ap/ajp-01(d).pdf (explaining the role of the Military Committee in recommending ROE for adoption by the North Atlantic Council) ("During periods of crises, the MC advises the NAC and DPC of the military situation, and makes recommendations on the use of military force, the implementation of contingency plans and the development of appropriate rules of engagement."); *see also Id.* para. 0521 ("Military actions are controlled by Rules of Engagement (ROE), which are authorized by the NAC on approval of the OPLAN.").

[28] *Id.*

body.[29] NATO agencies include such entities as the NATO Standardization Agency (NSA), NATO Maintenance and Supply Agency (NAMSA), and the NATO Communications and Information System Services Agency (NCSA).[30] Soldiers who eat at a NATO dining facility on the NATO-operated part of Kabul International Airport (KAIA) eat meals that were contracted and paid for by a NAMSA.

B. NATO Status of Forces Agreement

As North Atlantic Treaty member nations stationed troops within each other's territories for the purpose of defending the alliance, member nations agreed to afford baseline privileges and immunities for activity and personnel present on a treaty mission. The "Agreement between the Parties to the North Atlantic Treaty regarding the Status of Their Forces," which is more commonly known as the NATO Status of Forces Agreement (NATO SOFA), provides baseline privileges and immunities for all NATO personnel stationed in and transiting within member nations.[31] Privileges and immunities are further augmented by supplementary agreements with member nations. For example, the Supplementary Agreement with Germany extensively implements the basic NATO SOFA.[32]

In addition to the NATO SOFA, other agreements provide privileges and immunities for the activities of NATO personnel assigned to NATO subsidiary bodies and allied headquarters or international military headquarters. Unlike a national headquarters such as the 21st Theater Sustainment Command in Germany, which is a U.S.-sending state entity covered by the NATO SOFA, a NATO international military headquarters such as the Allied Joint Force Command Headquarters Brunssum, Netherlands, is not a sending state entity. Consequently, separate agreements govern its legal status and those of its personnel. The next two sections address the Ottawa Agreement[33] and Paris Protocol,[34] which provide status to NATO entities located on member state territory.

C. Ottawa Agreement

In Ottawa in September 1951, just three months after the signing of the NATO SOFA, the North Atlantic Treaty members also signed an "Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff."[35] The Ottawa Agreement defines and extends certain privileges and immunities to "the Organization," "the Council," "subsidiary bodies," and "Chairman of the Council of Deputies."[36] These bodies encompass NATO Agencies, specialized boards, the International Staff, the International Military Staff, and the Military Committee. In essence, while adding the word "Organization" to North Atlantic Treaty, it established rules that facilitated ease of movement and immunities for key policy makers.

The Organization has "juridical personality; it shall have the capacity to conclude contracts, to acquire and dispose of movable and immovable property and to institute legal proceedings."[37] The Organization has "immunity from every form of legal process [subject to waiver by the Chairman]."[38] The Organization's premises and archives "shall be inviolable."[39] The Organization "shall be exempt" from direct taxes, customs duties, and import restrictions.[40] Privileges and immunities were also extended to officials such as the Executive Secretary, the Coordinator of North Atlantic Defence Production that are "normally accorded to

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[29] *See, e.g.*, NORTH ATLANTIC COUNCIL, DEFENCE POL'Y AND PLANNING COMM. (REINFORCED) NATO AGENCIES REFORM, INITIAL REPORT OF THE LEGAL TASK FORCE ON AGENCY REFORM, AC/281-N(2011)0099 (R), annex 1, sec. 4 (19 May 2011) [hereinafter AGENCY REFORM REPORT] (Charters), *available at* https://clovis.hq.nato.int/dana-na/auth/url_10/welcome.cgi (login and password required). The report clarifies the distinction between Agency and Subsidiary Body as follows:

> 4.1 The subsidiary bodies listed at Annex 1, have been established through the approval of a Charter by the NAC . . . . In the context of the report it is to be noted that reference will be made to subsidiary bodies rather than Agencies. According to the provisions of the respective Charters, Agencies are the executive body of an Organization created as a subsidiary body.

Id.

[30] *Id.* annex 1.

[31] Agreement between the Parties to the North Atlantic Treaty regarding the Status of Their Forces, June 19, 1951, 4 U.S.T. 1792, 199 U.N.T.S. 67 (entered into force Aug. 23, 1953) [hereinafter NATO SOFA].

[32] Agreement to Supplement the Agreement of June 19, 1951, Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces With Respect to Foreign Forces Stationed in the Federal Republic of Germany, with Protocol of Signature, Aug. 3, 1959, 14 U.S.T. 531, 481 U.N.T.S. 262, T.I.A.S. No. 5351 (entered into force July 1, 1963) (as amended 24 U.S.T. 2355, T.I.A.S. No. 7759).

[33] Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff, 20 Sept. 1951, 5 U.S.T 1087, 200 U.N.T.S. 3 (entered into force May 18, 1954) [hereinafter Ottawa Agreement].

[34] Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty, Aug. 28, 1952, 5 U.S.T. 870, 200 U.N.T.S. 340 (entered into force Apr. 10, 1954) [hereinafter Paris Protocol].

[35] Ottawa Agreement, *supra* note 33.

[36] *Id.* art. I.

[37] *Id.* art. IV.

[38] *Id.* art. V.

[39] *Id.* arts. VI and VII.

[40] *Id.* art. X.

diplomatic personnel . . . ."[41] Further immunities were extended to "experts . . . employed on missions on behalf of the Organization . . . ."[42] The Ottawa Agreement does not extend privileges and immunities to military headquarters or other military bodies "unless the Council decides otherwise . . . ."[43]

D. Paris Protocol

In 1952, when NATO was still headquartered near Paris, its member nations signed the "Protocol on the Status of International Military Headquarters set up pursuant to the North Atlantic Treaty."[44] France, however, later renounced the Protocol when it withdrew from NATO in 1966, and Canada has not ratified it; therefore, issues related to headquarters in their territory must be resolved with reference to separate bilateral or multilateral agreements.

The Paris Protocol, as it is known, extends the privileges and immunities of the NATO SOFA to NATO's Allied Headquarters or International Military Headquarters and their personnel.[45] Technically, these headquarters must be "immediately subordinate to a Supreme Headquarters."[46] Most importantly, the Paris Protocol vests the source of legal authority and legal personality in NATO's Supreme Headquarters.[47] Now known as Strategic Commands, the two Supreme Headquarters (Allied Command Operations located in Mons, Belgium, and Allied Command Transformation, located in Norfolk, Virginia) are the source of authority for subordinate elements. As NATO elements are established on member state territory, the Strategic Commands negotiate "special arrangements" with a receiving state to further implement the Paris Protocol.[48]

While Strategic Commands have significant authority in the establishment of Allied Headquarters or International Military Headquarters, the North Atlantic Council also has authority to apply the provisions of the Paris Protocol to "any international military Headquarters or organization . . . which is established pursuant to the North Atlantic Treaty."[49] This authority provides a solution to the Paris Protocol rule that headquarters have to be "immediately subordinate to a Supreme Headquarters."[50] For example, NATO accredits national training centers known as Centres of Excellence (COE), which support NATO capabilities. These centres do not fall under the definition of subsidiary bodies, boards, organs, or Allied Headquarters subordinate to a Strategic Command. Since Allied Command Transformation is NATO's proponent of exercises, doctrine, and training, but does not have immediate oversight over a COE, it turns to the North Atlantic Council to vest an accredited Centre of Excellence with Paris Protocol status.[51]

E. Operational Agreements

As NATO deploys military capability out of treaty territory, its agreements may have no effect on non-NATO states. Consequently, NATO executes additional agreements to provide legitimacy for its mission, plus privileges and immunities for its personnel. For example, NATO's military presence and privileges and immunities for its role in Afghanistan as lead for the International Security Force (ISAF) is set forth in a Military Technical Agreement (MTA).[52] While U.S. forces acting under Operation

[41] *Id.* art. XX.

[42] *Id.* art. XXI.

[43] *Id.* art. II.

[44] Paris Protocol, *supra* note 34.

[45] *Id.* art. II ("The Agreement [NATO SOFA] shall apply to Allied Headquarters in the territory of a Party to the present Protocol in the North Atlantic Treaty area, and to the military and civilian personnel of such Headquarters and their dependents . . . .").

[46] *Id.* art. Ic ("'Allied Headquarters' means any Supreme Headquarters and any international military headquarters set up pursuant to the North Atlantic Treaty *which is immediately subordinate to a Supreme Headquarters*.") (emphasis added).

[47] *Id.* art. X ("Each Supreme Headquarters shall possess juridical personality; it shall have the capacity to conclude contracts and to acquire and dispose of property.").

[48] *Id.* ("The receiving State may, however, make the exercise of such capacity subject to special arrangements between it and the Supreme Headquarters or any subordinate Allied Headquarters acting on behalf of the Supreme Headquarters.").

[49] *Id.* art. XIV ("The whole or any part of the present Protocol or of the Agreement [NATO SOFA] may be applied, by decision of the North Atlantic Council, to any international military Headquarters or organization . . . .").

[50] *Id.* art. 1c.

[51] *See, e.g.*, *History of the CCOE*, CIVIL-MILITARY CO-OPERATION CTR. OF EXCELLENCE, http://www.cimic-coe.org/home/history.php (last visited Oct. 18, 2013).

> In November 2005, the final decision on the transformation of the former CGN HQ in to a CCOE was made by the Sponsoring Nations and supported by ACT and SHAPE . . . . The decision marked the start of a formalised accreditation procedure, which was concluded on 31 July 2007 when the North Atlantic Council granted the CCOE the status as a NATO accredited Centre of Excellence, with the status of an International Military Body, IAW Article 14 of the Paris Protocol.

Id.

[52] Military Technical Agreement Between the International Security Assistance Force and the Interim Administration of Afghanistan, 4 Jan. 2002, 41 I.L.M. 1032 [hereinafter MTA]. Annex A sets forth the status of forces arrangement; *see also* Exchange of Letters Between the NATO Secretary General and the Government of the Islamic Republic of Afghanistan (22 Nov. 2004) ("'NATO Personnel' means the military and civilian personnel assigned or attached to or employed by the North Atlantic Treaty Organization, its member States, and non-NATO Troop Contributing

Enduring Freedom have the equivalent of the 1961 Vienna Convention on Diplomatic Relations administrative and technical privileges and immunities, under a 2003 exchange of notes,[53] U.S. forces assigned or acting under Transfer of Authority (TOA) to ISAF are also covered by the MTA.

III. NATO Structure

This section explores the various entities that were created to execute alliance functions since the inception of the North Atlantic Treaty. The purpose is to provide a general understanding of NATO's civilian bureaucracy and military structure so that the judge advocate can frame issues in the context of their mission and legal status While U.S. personnel perform duty at most of these entities, very few of these entities have a U.S. judge advocate on the LEGAD staff. The most useful open source of information about these structures can be found in the Allied Joint Publication, AJP-01(D), Allied Joint Doctrine, which is also known as Standard NATO Agreement (STANAG) 2437.[54]

A. North Atlantic Council, Committees, and Subsidiary Bodies

As discussed in the previous section, the North Atlantic Council is not only the focal point for decision-making, but is also the source of legal authority within the North Atlantic Treaty.[55] The North Atlantic Council establishes subsidiary bodies that support the Secretary General and provide forums that represent national interests. These bodies include the International Staff, which supports the Secretary General, and the International Military Staff, which supports the Military Committee (MC). The Military Committee is essentially the forum for the Chiefs of Defense (i.e., Chairman of the Joint Chiefs of Staff) of each member state to engage in military policy and operational decisions.

The North Atlantic Council also creates entities that are now known as NATO Agencies. NATO Agencies perform major support functions such as procurement,[56] communications services,[57] and standardization of policy.[58] These bodies are located in select member states while their personnel may be deployed to NATO Command Structure headquarters.

These subsidiary bodies derive their legal status, privileges, and immunities from the Ottawa Agreement of 1951.[59] The Ottawa Agreement grants "juridical personality" to the North Atlantic Council and its subsidiary bodies.[60] The North Atlantic Council and its subsidiary bodies enjoy immunity with regard to its property and assets,[61] premises,[62] and archives.[63] NATO is reviewing and consolidating its subsidiary bodies under a process known as

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States that are operating under NATO command and control arrangements or in support of the International Security Assistance Force.").

[53] Agreement Regarding the Status of United States Military and Civilian Personnel of the U.S. Department of Defense Present in Afghanistan in Connection with Cooperative Efforts in Response to Terrorism, Humanitarian and Civic Assistance, Military Training and Exercises, and Other Activities, U.S.-Transitional Islamic State of Afghanistan, Sept. 26, 2002–May 28, 2003, 2002 U.S.T. LEXIS 100 (entered into force May 28, 2003).

[54] AJP-01D, *supra* note 27.

[55] North Atlantic Treaty, *supra* note 11, art. 9.

[56] *NATO A-Z, The NATO Support Agency (NSPA)*, NORTH ATLANTIC TREATY ORGANIZATION (28 June 2012), http://www.nato.int/cps/en/natolive/topics_88734.htm.

> NSPA's mission is to provide responsive, effective and cost-efficient logistics support services for systems and operations. This support is provided—in times of peace, crisis and war, wherever required—to the NATO member nations, the NATO Military Authorities and partner nations, both individually and collectively. In line with guidance provided by the North Atlantic Council, it aims to maximise the ability and flexibility of armed forces, contingents, and other relevant organisations to execute their core mission.

Id.

[57] *NATO A-Z, The NATO Communications and Information Agency (NCI Agency)*, NORTH ATLANTIC TREATY ORGANIZATION, http://www.nato.int/cps/en/natolive/topics_69332.htm (last visited Oct. 16, 2013).

> NCI Agency delivers advanced Command, Control, Communications, Computers, Intelligence, Surveillance and Reconnaissance (C4ISR) technology and communications capabilities in support of Alliance decision-makers and missions, including addressing new threats and challenges such as cyber and missile defence. This includes the acquisition of technology, experimentation, the promotion of interoperability, systems and architecture design and engineering, as well as testing and technical support. It also provides communication and information systems (CIS) services in support of Alliance missions.

Id.

[58] *NSA Mission*, NATO STANDARDIZATION AGENCY, http://nsa.nato.int/nsa/ (last visited Oct. 16, 2013) ("The NSA is an independent NATO Agency that reports to the Committee for Standardization (CS) for general oversight and direction. (The NSA reports directly to the Military Committee, however, for issues relating to operational standardization.) The Agency's mission is to foster NATO standardization with the goal of enhancing the combined operational effectiveness of Alliance military forces.").

[59] Ottawa Agreement, *supra* note 33.

[60] *Id.* art. IV.

[61] *Id.* art. V.

[62] *Id.* art. VI.

[63] *Id.* art. VII.

Agency Review.[64] Agency Review raises several legal issues under the Ottawa Agreement concerning disposition of assets, disposition of records, downsizing, relocation, renaming of a body, and effect of international agreements.[65] This is associated with name changes and modification to agency charters, which may impact supplementary agreements on their status in member states.

B. NATO Command Structure

NATO's military construct is institutionalized under the NATO Command Structure (NCS).[66] The current command structure dates to a NATO Military Committee Decision of 2003, which consolidated a multitude of Cold War-era Allied commands including numerous sub-regional commands.[67] Two Strategic Commands (SC) act as the focal point for NATO's operations and concepts: Allied Command Operations and Allied Command Transformation. From a legal perspective, Strategic Commands are the source of legal personality or "juridical personality" for all subordinate international military headquarters.

1. Allied Command Operations

NATO's operations capability is institutionalized in its Strategic Command known as Allied Command Operations (ACO), which is still referred to by its legacy name: Supreme Headquarters Allied Powers Europe (SHAPE).[68] Supreme Allied Commander Europe (SACEUR) commands not only ACO, but is also Commander, U.S. European Command (USEUCOM). Allied Command Operations provides direction and guidance to its subordinate Allied Joint Force Commands (JFC): JFC Brunssum, and JFC Naples.[69] Until recently, each Joint Force Command included subordinate component commands much like a U.S. combatant command (Air, Land, Maritime, and Special Operations Forces (SOF)).[70] The component commands are now stand-alone service-like component commands which provide forces for a Joint Force Commander. Army judge advocates are serving at JFC Naples and the Land Component Command in Izmir, Turkey.

Allied Joint Force Commands are international military headquarters staffed with NATO Permanent Establishment (PE) posts. If the Allied Joint Force Command sets up a subordinate command to execute operations, the deployed post may be established via crisis establishment (CE) billets created by a document known as a Combined Joint Statement of Requirements (CJSOR).[71] For example, all LEGAD billets within ISAF are coded as CE billets on the CJSOR for ISAF and its subordinate operational command, the IJC. Additional contributions to the CE billet structure are considered a Voluntary National Contribution (VNC), thus are an excess requirement and not reflected on the CJSOR.[72]

2. Allied Command Transformation

NATO's transformational training and doctrine capability is vested in Allied Command Transformation (ACT).[73] The Supreme Allied Commander Transformation (SACT) used to also be the Commander, U.S. Joint Forces Command (USJFCOM), Norfolk, Virginia; but with USJFCOM's closure, SACT is now a French flag officer's post. ACT's "core task is to lead the transformation of NATO's military structures, forces, capabilities and doctrine in order to improve the military effectiveness of the Alliance."[74] Allied Command Transformation's subordinate commands include ACT Staff Element Europe, Mons, Belgium; Joint Warfare Centre, Stavanger, Norway; Joint Force Training Centre (JFTC), Bydgoszcz, Poland; Joint Analysis and Lessons Learned Centre, Monsanto, Portugal.[75]

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[64] *NATO A-Z, NATO Reform*, NORTH ATLANTIC TREATY ORGANIZATION (8 April 2013), http://www.nato.int/cps/en/natolive/topics_68230.htm ("Agencies Review aims to enhance efficiency and effectiveness in the delivery of capabilities and services, to achieve greater synergy between similar functions and increase transparency and accountability. At the Lisbon Summit, Allies agreed to streamline the 14 NATO agencies into three major programmatic themes: procurement, support, and communications and information.").

[65] AGENCY REFORM REPORT, *supra* note 29.

[66] AJP-01(D), *supra* note 27, ch. 3.

[67] NORTH ATLANTIC MILITARY COMM., MC 324/1 (MILITARY DECISION), THE NATO MILITARY COMMAND STRUCTURE (16 May 2003) (NATO-restricted). THE NATO COMMAND MILITARY STRUCTURE was reissued as NORTH ATLANTIC MILITARY COMM., MC 324/1 (MILITARY DECISION), THE NATO MILITARY COMMAND STRUCTURE (16 Feb. 2010) (NATO-restricted).

[68] AJP-01(D), *supra* note 27, annex 3A, para. 3A2a n.3 ("This historic acronym [SHAPE] continues to be used despite recent changes to the NATO military command structure.").

[69] *Id.*

[70] *Id.* annex 3, para. 3A2a.

[71] ALLIED COMMAND OPERATIONS (ACO), DIR. 45-3, ALLIED COMMAND OPERATIONS CRISIS ESTABLISHMENT (CE) MANAGEMENT ch. 1, para. 1-5a (10 Mar. 2011) [hereinafter ACO DIR. 45-3] *available at* https://clovis.hq.nato.int/RC/Basic%20documents/,DanaInfo=clovis.hq.nato.int+ACO_DIR_045_003.pdf (login and password required) (describing the force generation process: "Following the NAC Force Activation Directive, a force generation process is triggered by SHAPE releasing the Activation Warning (ACTWARN). A Combined Joint Statement of Requirements (CJSOR) is drawn up by SHAPE CPP . . . ."); *see also* NATO GLOSSARY, *supra* note 1, at C-17.

[72] NATO GLOSSARY, *supra* note 1, at V-3.

[73] AJP-01(D), *supra* note 27, annex 3A, para. 3A2b.

[74] *Id.*

[75] *Id.* annex 3, para. 3A2b n.5.

A judge advocate should look to ACT to fulfill predeployment training requirements. The Joint Warfare Centre and the Joint Force Training Center provide exercise and training opportunities that are particularly important to judge advocates at the operational (Corps) and tactical (Division) level. The Joint Warfare Center provides an exercise platform for staff personnel filling positions at HQ ISAF and the IJC. The Joint Force Training Centre provides a similar platform for those deploying to ISAF Regional Commands.

In 2012, U.S. V Corps and U.S. III Corps sent their deploying legal staff to participate in a combined exercise, UNIFIED ENDEAVOR/ISAF Training Event, hosted by the Joint Multinational Training Center in Grafenwoehr, Germany. NATO allies also sent their deploying personnel who were designated to fill NATO billets in the deployed NATO LEGAD office. As NATO missions evolve, more effort will likely be made to train NATO Force Structure units that are assigned to perform NATO Response Force duties on behalf of the Alliance.

C. NATO Force Structure

NATO Command Structure provides the basis for NATO command and control of units that have been transferred to NATO control. Nations allocate units or personnel to fill NATO Force Structure (NFS) military response capabilities, which are the actual fighting elements within NATO.[76] NATO Force Structure may be "composed of allied, national and multinational forces, together with affiliated headquarters, which are placed at the Alliance's disposal on a permanent or temporary basis under specified readiness criteria. National contributions to NATO Force Structure are made available to the Alliance under both the agreed mechanisms for the Transfer of Authority [TOA] and by coordination and cooperation agreements . . . ."[77] A U.S. judge advocate has recently been assigned to a NATO Force Structure unit: the German-Netherlands Corps, Muenster, Germany. While NATO Force Structure units have limited U.S. judge advocate presence, U.S. personnel are assigned to NATO posts in many NATO Force Structure units. In this way, it is possible for a U.S. Corps or Division to deploy under the operational command of NATO. Consequently, the SJA for the U.S. Corps or Division will be responsible for legal advice concerning NATO operations.

The traditional function of NATO Force Structure units has been to fight a conventional war under article 5 of the North Atlantic Treaty.[78] Emerging threats demand a broader spectrum of operational responses, including Non-Article 5 Crisis Response Operations (NA5CRO).[79] Non-Article 5 operations cover contingencies that do not amount to a response to an armed attack on Alliance territory.[80] NATO's operations enforcing the U.N. mandate during Operation Unified Protector was a glimpse into NATO's potential future. One type of NATO entity that may be called upon to execute these operations includes the NATO Response Force (NRF).[81] The NRF is a combined joint package comprising Air, Land, Maritime, and SOF capabilities to meet an extant crisis.[82]

IV. Transfer of U.S. Personnel and Units to NATO

A. Doctrine for Multinational Operations

[W]hen a group of countries wants to launch a joint intervention as a coalition–which confers political legitimacy–only NATO can provide the common command structure and capabilities necessary to plan and execute complex operations.[83]

U.S. doctrine concerning multinational operations was significantly revised in July 2013 and reflects U.S. experience with NATO operations. In an Alliance operation, Alliance rules provide both the political and military framework for unity of effort.[84] Under U.S. doctrine, there are three types of multinational command

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[76] NORTH ATLANTIC MILITARY COMM., MC 317/1(MILITARY DECISION), THE NATO FORCE STRUCTURE (24 July 2001) (NATO-restricted).

[77] AJP-01(D), *supra* note 27, annex 3A, para. 3A7.

[78] North Atlantic Treaty, *supra* note 11, art. 5.

[79] AJP 3.4A, *supra* note 21.

[80] *Id.* ch. 1, para. 0104b(2).

[81] ALLIED JOINT PUB. (AJP) 3(B), ALLIED DOCTRINE FOR THE CONDUCT OF OPERATIONS para. 0229, ch. II, (Mar. 16, 2011) [hereinafter AJP-3B], *available at* http://nsa.nato.int/nsa/zPublic/ap/ajp-3(b).pdf ("The NATO Response Force (NRF) is a high-readiness, joint and combined force whose purpose it is to provide an immediate military response to an emerging crisis as part of the Alliance comprehensive crisis management system for both Article 5 and crisis response operations. The NRF mission is to provide a rapid demonstration of force and early establishment of a NATO military presence."); *see also* ALLIED COMMAND OPERATIONS DIR. (AD) 80-96, NATO RESPONSE FORCE (24 Apr. 2013) [hereinafter AD 80-96] (NATO restricted); NORTH ATLANTIC MILITARY COMM., MC 477 (MILITARY DECISION), MILITARY CONCEPT FOR THE NATO RESPONSE FORCE (Apr. 10, 2003) (NATO-restricted).

[82] AD 80-96, *supra* note 81.

[83] Ivo H. Daadler & Admiral James S. Stavridis, Supreme Allied Commander Europe and Commander U.S. European Command, *NATO's Victory in Libya: The Right Way to Run an Intervention*, FOREIGN AFF., Mar./Apr. 2012, at 4. The authors go further by comparing NATO Alliance operations to multilateral coalitions which "by contrast, have no common doctrine for conducting military operations, no common capabilities or command structure for quickly integrating national forces into a cohesive campaign, and no standing mechanisms for debating then deciding on an agreed course of action. Such ad hoc coalitions therefore almost always rely disproportionately on a single nation to bear the brunt of security burdens that ideally should be more equally shared." *Id.*

[84] *Id.*

structures: Integrated; Lead-nation (LN); and Parallel.[85] Similarly, NATO doctrine (adopted by the United States as STANAG 2490) recognizes three structural models for the command and organization of multinational forces: Fully Integrated; Lead Nation; and Framework Nation.[86] While still part of NATO's joint doctrine, the structural models are no longer reflected in NATO's operational doctrine.[87] The Fully Integrated model is the prime example of a command structure that provides a common umbrella of ROE, staff procedures, and political aims.[88] For example, HQ ISAF is a NATO-led Fully Integrated multinational headquarters. In contrast, the United States was the Lead Nation for the command and control of Multinational Forces−Iraq (MNF−I) during Operation Iraqi Freedom (OIF), which was characterized by *ad hoc* bilateral arrangements.[89]

After the dissolution of the Soviet Union in 1991, the United States found itself increasingly committed to multinational operations involving NATO.[90] Judge

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[85] JOINT CHIEFS OF STAFF, JOINT PUB. 3-16, MULTINATIONAL OPERATIONS ch. II, para. 4 (17 July 2013) [hereinafter JOINT PUB 3-16] (identifying three types of multinational command structure: Integrated (e.g., NATO); Lead-nation (e.g., Operation Iraqi Freedom); Parallel (e.g., Gulf War 1991)).

[86] ALLIED JOINT PUB. (AJP) 3(A), ALLIED DOCTRINE FOR JOINT OPERATIONS ch. 1, sec. V (Multinational Cooperation (the Combined Approach to Operations), para. 0147 (Command Organization) (2 July 2007) [hereinafter AJP 3A], *available at* https://clovis.hq.nato.int/RC/Basic%20documents/,DanaInfo=clovis.hq.nato.int+AJP_3_A.pdf (login and password required).

> a. Fully Integrated. Fully integrated forces are based on a 'proportional shares' bi- or multinational basis with national components and a fully integrated headquarters. The working language and procedures would be agreed by the contributing nations. Commanders of such multinational formations are usually appointed on a rotational basis.
>
> b. Lead Nation. One nation would assume responsibility for the planning and execution of an operation. The commanding officer, staff, Command, Control, Communications and Information (C3I) structure, doctrine and logistic coordination of the force would normally be provided by one nation (the lead nation). Other nations could assign contributions to this force, and fill staff positions in the lead nation's staff.
>
> c. Framework Nation. One nation provides the framework for the required command structure and forces. The key elements of the staff and the headquarters support would come from the framework nation. The working language and procedures though would be based on Alliance standards.

Id.

[87] AJP 3(A) is superceded by ALLIED JOINT PUB. (AJP) 3(B), *supra* note 81, para. 3, preface ("The main difference between AJP-3(A) and AJP-3(B) is that this publication better reflects the linkage between the newly revised capstone joint doctrine document AJP-01(D) [*supra* note 27], with which it should be used in conjunction."); *see also* AJP-01(D), *supra* note 28, at 0316 (preserving the language cited at footnote 85).

[88] JOINT PUB 3-16, *supra* note 85, para. 5, ch. II (articulating the U.S. view (and virtues) of alliance operations):

> 5. Multinational Command Structures
>
> a. In multinational commands, national political objectives are addressed and generally subsumed within MNF objectives at the alliance treaty level. Typically, alliance command structures have been carefully developed over extended periods of time and have a high degree of stability and consensus; doctrine and standardization characterize alliances. Established command structures may be modified or tailored for particular operations, especially when combined operations include non-allied members.
>
> b. Combined command relationships often reflect either an integrated command structure or a LN [lead nation] command structure. Alliances typically have established command structures, support systems, and standardized procedures. In combined operations, such structures should be used to the maximum practical extent. Combined command and force structures often mirror the degree of allied member participation. Subordinate commands are often led by senior military officers from member nations. Effective operations within an alliance require that the senior political and military authorities be in agreement on the type of command relationships that will govern the operations of the forces. Notwithstanding peacetime command relationships, the political sensitivities associated with actual operations will impact command relationships and operating procedures.

Id.

[89] Joint Publication 5.0, *Joint Operation Planning*, which states as follows:

> 17. Multinational Planning and Coordination
>
> a. General. *Multinational operations* is a collective term to describe military actions conducted by forces of two or more nations. Such operations are usually undertaken within the structure of a coalition or alliance, although other possible arrangements include supervision by an IGO (such as the United Nations or Organization for Security and Cooperation in Europe). A coalition is an arrangement between two or more nations for common action. Nations usually form coalitions for a single occasion or for longer cooperation in a narrow area of common interest. An alliance is a result of formal agreements between two or more nations for broad, long-term objectives that further the common interests of the members. Key to any multinational operation is the achievement of unity of effort among political and military leaders of member nations emphasizing common objectives and shared interests as well as mutual support and respect[emphasis added].

JOINT PUB. 5.0, JOINT OPERATION PLANNING ch. II, para. 17, at II-37 (11 Aug. 2011).

[90] *See, e.g.*, *Current Operations*, ALLIED COMMAND OPERATIONS, http://aco.nato.int/ongoingoperations.aspx (last visited Oct. 16, 2013). Current operations include NATO-led command and control of the International Security Assistance Force (ISAF); NATO-led mission in support of the U.N. mandate for a peace support operation in Kosovo (KFOR); Operation Active Endeavor (an enduring maritime counterterrorism operation in the Mediterranean); and Operation Ocean

advocates and other U.S. lawyers assigned to NATO posts play an important role in shaping and executing NATO operations.[91] Consequently, there are growing opportunities to serve outside of national units in NATO Command Structure, NATO Force Structure, NATO Organizations, and their subsidiary bodies.[92]

B. NATO Posts

Assignment to a NATO staff billet in a permanent NATO headquarters or subsidiary body, known as a Permanent Establishment (PE) post, is a national decision, which in the case of the United States, after service and branch equities have been met, is coordinated by a staff element located at the U.S. European Command.[93] Since the assignment of U.S. personnel to NATO is part of a member state's contribution to NATO, NATO does not reimburse the Department of Defense for assignments to NATO posts.[94] The assignment process is slightly different for personnel assigned to operational billets known as Crisis Establishment (CE) posts.

Operational and tactical crisis establishment posts include those found at Headquarters (HQ) International Security Assistance Force (ISAF), HQ ISAF Joint Command (IJC), NATO Training Mission-Afghanistan (NTM−A), NATO Rule of Law Field Support Mission−Afghanistan (NROLFSM-A), and HQ Kosovo Force (KFOR).[95] When the SJA of a U.S. Corps becomes the Chief LEGAD of a NATO crisis establishment post such as the IJC, the SJA is also vested as a NATO LEGAD responsible for the delivery of advice on NATO operations.

NATO Force Structure is filled by units of specific military capabilities that have been offered to NATO by Troop Contributing Nations (TCN) and accepted under a NATO operational regime known as Transfer of Authority (TOA).[96] Not all NATO Force Structure is comprised of crisis establishment posts. When a troop-contributing nation proffers capability (personnel or a unit) to NATO, it is the equivalent of a service providing organized, trained, and equipped forces to a Combatant Commander.[97]

Shield (ongoing counter-piracy operations in the waters off the Horn of Africa). *Id.*

[91] *E.g.*, JFC Naples Chief LEGAD is a U.S. Army judge advocate colonel; the KFOR Deputy LEGAD is a U.S. Army judge advocate colonel; the Chief LEGADs for both ACO and ACT are retired U.S. Navy judge advocates; the Chief LEGADs and almost the entire LEGAD CE posts for HQ ISAF, IJC, NATO Training Mission-Afghanistan (NTM-A) (Commander, NTM-A are dual-hatted as Commander of the U.S. Combined Security Training Command-Afghanistan (CSTC-A)), and Regional Commands East, South, and Southwest are comprised of U.S. judge advocates; the Combined Air Operations Centre (CAOC) servicing the U.S.CENCTOM AOR, including Afghanistan air operations, is populated by U.S. Air Force attorneys; U.S. judge advocates filled key JFC Naples Air Component Command slots in its CAOC during execution of missions over Libya during Operation Unified Protector; ISAF's direct reporting unit, the NATO Rule of Law Field Support Mission-Afghanistan, is commanded by a U.S. one-star judge advocate.

[92] AJP-01(D), *supra* note 27, ch. 3.

[93] CHAIRMAN OF THE JOINT CHIEFS OF STAFF, INSTR. 1600.01A, CHARTER FOR UNITED STATES EUROPEAN COMMAND NATO MANNING DIVISION para. 6a(2)(b)1 (10 Dec. 2010) [hereinafter CJCSI 1600.01A] (The manning division, *inter alia*, "[m]anages manpower requirements and sourcing strategies for U.S. contributions to NATO, to include Voluntary National Contributions, dualhat, rotational and non-quota post allocations, and U.S. joint requirements.").

[94] U.S. DEP'T OF DEF., FINANCIAL MANAGEMENT REGULATION, DOD 7000.14R, VOL. 11A, CH.R 9, SUPPORT OF INTERNATIONAL MILITARY ACTIVITIES para. 0902 [hereinafter FMR], *available at* http://comptroller.defense.gov/fmr/current/11a/Volume_11a.pdf (last visited Oct. 18, 2013). This policy is articulated as follows:

> 090201. Nonreimbursable Support
>
> The Department of Defense (DoD) provides nonreimbursable support to international military organizations in two forms: (1) through a financial contribution to the budget of the international organization, or (2) by assignment of U.S. military elements to the international organization under the terms of international treaties or agreements (see *DoD Directive 5530.3*, "International Agreements"). The U.S. military elements may be assigned either on a long-or short-term basis.
>
> A. Typically, short-term assignments would be for the purpose of participating in a joint exercise or maneuvers conducted under the auspices of the international organization.
>
> B. Long-term assignments typically involve filling an existing billet on the staff of an international organization.
>
> C. Support under paragraphs 090201.A. and B., are not reimbursable to DoD. As an exception to this policy, support by members of a U.S. military element who provide services that were included in the budget of the international organization (e.g., a U.S. military member who occupies an international civilian billet) shall be reimbursable . . . .

Id. at 4.

[95] ACO DIR. 45-3, *supra* note 71, para. 1-4a (defining a CE billet as "a table setting out the authorised posts for a CRO [Crisis Response Operation] unit, formation or headquarters").

[96] ALLIED COMMAND OPERATIONS DIR. 80-20, ALLOCATION OF FORCES AND TRANSFER OF AUTHORITY (17 June 2011) [hereinafter ACO DIR. 80-20] (NATO-restricted). For U.S. forces, this requires Secretary of Defense approval, under provisions of 10 U.S. Code § 162, because this is an allocation of U.S. forces that are outside the normal "forces for" Combatant Commanders process.

[97] CHAIRMAN OF THE JOINT CHIEFS OF STAFF, INSTR. 2700.01E, INTERNATIONAL AGREEMENTS FOR RATIONALIZATION, STANDARDIZATION, AND INTEROPERABILITY (RSI) BETWEEN THE UNITED STATES ITS ALLIES AND OTHER FRIENDLY NATIONS encl. A, para. 4b (18 Jan. 2012) [hereinafter CJCSI 2700.01E] (reinforcing the NATO rule that *"Nations are responsible for training, organizing, and equipping the forces they have earmarked for, or assigned to, an alliance or Coalition."*) (emphasis added).

Personnel assigned to NATO posts at the operational level (e.g., HQ ISAF, IJC, NTM-A) have to receive training mandated by their controlling operational Allied Joint Force Command (JFC).[98] Additionally, the post's job description (JD) may require that the incumbent receive specialized predeployment training and education.[99] Supervisory LEGADs should specify training and education requirements in office JDs to not only ensure deployment of qualified personnel, but also to maximize training opportunities while in the post. When a JD contains training requirements, NATO may fund a portion of transportation costs, using NATO international travel funds once the post is filled.[100] For personnel assigned to posts in Afghanistan at the operational level, their first taste of NATO training could be at the Joint Warfare Centre, Stavanger during an ISAF Predeployment Training Event or Individual Augmentee Predeployment Training (IAPDT). Upon learning about a potential NATO assignment, particularly at the operational level, U.S. military lawyers should contact the incumbent Joint Warfare Centre LEGAD to determine what training is available.

C. U.S. Support to its Personnel in NATO Posts

The United States assigns personnel to NATO posts located in diverse locales including Izmir, Lisbon, Madrid, Milan, Mons, Muenster, and Stavanger.[101] These assignments create administrative and logistical challenges to all nations who must support dispersed clusters of personnel. In the case of the United States, the Secretary of Defense designates a service to act as administrative agent for the logistical support of U.S. personnel assigned to international military HQs.[102] For example, the U.S. Army is the agent for the International Military Staff at HQ NATO in Belgium, while the U.S. Navy is the agent for JFC Naples, and the U.S. Air Force is the agent for JWC in Norway. This support may also extend to fiscal contributions to the mission of the unit based upon Memoranda of Understanding (MOUs).[103] For example, the United States

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[98] *See, e.g.*, Letter from Allied Joint Force Command Brunssum, subject: NATO-Led ISAF Predeployment Training 2013, para. 1 (22 Nov. 2012) [hereinafter JFCB Training Memo], *available at* https://clovis.hq.nato.int/RC/References/,DanaInfo=clovis.hq.nato.int+LTR_JFCBS_PreDeployment_2013.pdf (login and password required).

> The purpose of this letter is to inform ISAF Troop Contributing Nations of the requirement to attend NATO-led Pre-Deployment Training. The NATO training professionals at all of the NATO Education and Training Facilities provide the best training available, and this is critical to our success in Afghanistan. The annexes to this letter provide detailed information regarding the HQ ISAF/IJC pre-deployment training and other selected training events for 2013, as well as the ISAF training calendar for 2013, and details regarding course content. Subsequent quarterly letters will provide updates and changes as necessary for each quarter of 2013.

Id.

[99] ACO DIR. 45-3, *supra* note 71, para. 3-2a ("Pre-deployment Training Requirements. Any requirement for national mandatory pre-deployment training is the responsibility of each TCN or NATO for deployed NICs [NATO International Civilians discussed later]. *NATO requirements are specified on the JD.")* (emphasis added).

[100] *See, e.g.*, ALLIED COMMAND OPERATIONS, DIR. 60-50, TRAVEL ON INTERNATIONAL DUTY (21 Dec. 2006) [hereinafter ACO DIR. 60-50].

[101] For an exhaustive list of these headquarters, see FMR, *supra* note 94, vol. 11A, ch. 9, tbl.9-1. An extract of Administrative Agent responsibilities for ACO is as follows:

> 2. Allied Command Operations (ACO)
>
> a. Supreme Headquarters Allied Powers Europe (SHAPE)
> Army
> (Mons, BE)
>
> b. HQ Allied Joint Force Command Brunssum (HQ JFCBS)
> Army
> (Brunssum, Netherlands (NL))
>
> c. HQ Allied Maritime Command (HQ MARCOM)
> Air Force
> (Northwood, United Kingdom (UK))
>
> . . .
>
> (3) Allied Deployable Air Command and Control Center
> Army
> (DACCC) (Poggio Renatico, Italy(IT))
>
> (4) Combined Air Operations Center #5
> Army
> (Poggio Renatico, IT)
>
> . . .
>
> e. HQ Allied Land Command (HQ LANDCOM)
> Air Force
> Izmir, Turkey (TU)
>
> . . .
>
> g. HQ Allied Joint Force Command Naples (HQ JFCNP)
> Navy
> (Naples, IT)

[102] *Id.*

[103] *Id.* para. 090303 (Administrative Agent). The administrative agent shall:

> A. Budget for the U.S. contributions to designated non-NATO international military organizations. When the Army is not the administrative agent for a NATO body, or other multinational headquarters, the designated agent shall provide the Army with program and budget information on the annual contribution for inclusion in the Army's O&M appropriation. Budgeting for the NAPMA constitutes an exception to this policy.
>
> B. Coordinate with appropriate U.S. representatives at the international military organizations to ensure that effective procedures and controls are prescribed for budgeting, obligating, disbursing, and receiving credits incident to administering the U.S. contributions.

is a major financial supporter of the NATO School Oberammergau, Germany based, on an original agreement between the U.S. Army and Germany executed in 1974.[104] In NATO, the term "MOU Organization" refers to a multilaterally funded entity such as NATO Centres of Excellence and operational units, such as the Allied Rapid Reaction Corps (ARRC), which are funded via multilateral MOU.[105] Service attitude, funding, and resourcing, therefore, have a great impact on the quality of life for U.S. personnel assigned to NATO structures.

V. NATO LEGAD Practice and Issues

A. LEGAD Organization and Function

NATO LEGAD organization and function is derived from NATO's Bi-Strategic Command (Bi-SC) Directive 15-23, which governs the delivery of legal advice within NATO's two Strategic Commands.[106] This regulation mandates that the LEGAD be part of the Command Group and not subordinated to another staff element.[107] Apart from obvious cultural differences and specific mission focus, a U.S. judge advocate will find that the organization and functions of a NATO LEGAD Office are remarkably similar to those of an Office of the Staff Judge Advocate or General Counsel's Office.

B. Legal Research Tools

Few LEGADs gain NATO experience while practicing law in their national posts. Opportunities to attend NATO collective legal training may also be limited.[108] LEGADs filling NATO posts as augmentees face a significant challenge preparing for their NATO duties. Compounding the lack of exposure to NATO experience and training opportunities is limited access to NATO documents. Reach-back to national systems is also limited by having a "foreign" IP address (NATO is not on the <.mil> or <.gov> domain). Further, U.S. LEGADs may not have the ability to use a CAC on NATO systems. NATO's document handling systems exclude access to personnel who are not part of NATO organizations and subsidiary bodies, NATO Command Structure or NATO Force Structure posts. Fortunately, there are several ways to get access to relevant information.

The NATO e-Library page provides links to its official texts.[109] The NATO Standardization Agency (NSA) website provides access to key unclassified doctrinal publications that have been adopted by NATO member nations as a Standard NATO Agreement.[110] Upon request, prospective LEGADs can obtain a copy of the NATO Legal Deskbook, which provides a superb overview of key legal issues and NATO processes.[111] The NATO Legal Gazette (first

> C. Program and allocate resources in a manner that will provide the international organization with the highest possible level of support under section 0902 and paragraphs 090402, 090403, or 090404 of this chapter consistent with financial constraints that may be imposed through the normal program and budget process.
>
> D. Support U.S. military elements attached to the designated international military organization on a nonreimbursable basis, unless the support is an international budget cost or is a budget responsibility of another Military Department (see paragraph 090304). The standards and directives of the administrative agent shall govern the level and type of support furnished. The level and type of support will be consistent with the highest possible level of support allowable under this chapter while not violating those same governing standards and directives. Support requirements based upon input provided by the U.S. military element shall be included in the administrative agent's annual budget. In carrying out this support responsibility, the administrative agent shall obtain support from the most efficient and economical source while ensuring that no parallel support facility is established when the support may be performed economically by local sources (see *DoD Instruction 4000.19,* "Interservice and Intragovernmental Support").
>
> E. Provide U.S. military elements, which are Table of Organization and Equipment (TO&E) or equivalent units, with replacement issues of consumable and nonconsumable material, obtaining peculiar items when necessary from supply systems of the parent Military Service on a reimbursable basis.

[104] *Id.* vol. 11A, ch. 9, tbl.9-1.

[105] *Id.* vol. 11A, ch. 9, para. 4, tbl.9-1 (outlining MOU Organizations, which include NATO Rapid Deployable Corps, German-Netherlands Corps, Muenster, Germany).

[106] BI-STRATEGIC COMMAND, DIR. 15-23, POLICY ON LEGAL SUPPORT (23 July 2009) [hereinafter BI-SC DIR. 15-23], *available at* https://clovis.hq.nato.int/RC/Basic%20documents/Forms/,DanaInfo=clovis.hq.nato.int+All%20Directives.aspx (login and password required).

[107] *Id.* para. 7 ("The Office of the Legal Adviser is a key member of the Command Group and the Senior Legal Adviser enjoys direct access to the Commander.").

[108] NATO training is also available at numerous ACT-recognized NATO Centres of Excellence. Additionally, the NATO School, Oberammergau, Germany is a mainstay of NATO-oriented legal training. The NATO School offers an excellent introductory course for NATO LEGADs and more advanced operational law and targeting courses for seasoned LEGADs. Funding for attendance falls on the nations.

[109] e-*Library*, NORTH ATLANTIC TREATY ORGANIZATION, http://www.nato.int/cps/en/SID-78FFB86D-59C6D9E0/natolive/publications.htm (last visited Oct. 16, 2013).

[110] *See, e.g.*, AJP-01(D), *supra* note 27 (the AJP is adopted as STANAG 2437).

[111] NATO LEGAL DESKBOOK, *supra* note 8 (the Deskbook is in constant draft and, as a living document, gets better with each evolution). The current edition consists of 17 parts as follows:

published in 2006) provides NATO LEGAD practitioners' insights to current NATO issues.[112] Once in-processed to a NATO post, or upon request before assuming a NATO post, NATO LEGADs will have access to Comprehensive Legal Overview Virtual Information System (CLOVIS), which is an online community of interest sponsored by the legal element of ACT's Staff Element Europe.[113]

C. Common Legal Issues

1. Rules of Engagement

Legal Advisors serving within NATO Command and Force Structure have a key role in the delivery of operational law advice to their commands. For example, the LEGADs located at JFC Naples, the Land Component Command Izmir, and German-Netherlands Corps devote a substantial portion of their duties to operational law issues. Legal Advisors assigned to NATO contingencies such as Headquarters ISAF and the ISAF Joint Command (IJC) can expect to focus almost all their NATO efforts on operational law. Consequently, LEGADs who deliver operational law advice must be versed in NATO Rules of Engagement.

NATO has its own Rules of Engagement as part of its integrated alliance command and control structure.[114] Unlike U.S. Standing Rules of Engagement, NATO ROE are tailored for a specific operation. The North Atlantic Council authorizes ROE for this purpose.[115] Generally, Annex E of all NATO operations plans will contain the approved ROE and Political Policy Indicators governing the operation. Additional amplification of the ROE, and a useful tool for interpretation of the ROE, is found in the ROE implementation message (ROEIMPL—pronounced "ROW-impull"). ACO/SHAPE, in its capacity as Strategic Command, issues ROEIMPL which are a compilation of ROE from MC 362/1 that apply to the operation.[116] Additional legal definitions and guidance will normally be contained in the OPLAN's legal Annex AA. The definitions for hostile act and hostile intent are particularly important for the NATO practitioner because they will not necessarily mirror their national practice.[117]

NATO does not issue ROE on self-defense because NATO considers self-defense to be a matter of national law.[118] What the United States might consider self-defense rules appear under NATO's "Attack" series of ROE as responses to hostile acts or intent.[119] One term peculiar to NATO ROE includes Series 33 rules (Use of Force in Designated Operations): Persons Designated Special Status (PDSS) and Property Designated Special Status (PrDSS).[120] An area that LEGADs need to know is whether national caveats impact the ability of a troop contributing nation to execute a given mission.[121] Ultimately, NATO ROE provide an umbrella under which most nations' ROE are tailored to execute their role in a NATO-led operation. Deviations from NATO ROE are declared by national caveats and published by ACO/SHAPE for a given operation.[122] The ROE may appear transparent to the Soldier on the ground, but the LEGAD needs to know the bigger picture and must

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Part I: The Development and Organization of NATO and the Overview of NATO Bodies;
Part II: Decisionmaking and Document Management;
Part III: Introduction to the Law of International Organizations and to Key NATO Legal Documents;
Part IV: Key NATO Legal Documents on the Status of Forces and Headquarters;
Part V: Treaty Law, International Agreements and NATO Practice;
Part VI: Legal Support in NATO;
Part VII: Personnel;
Part VIII: Overview of NATO Procurement, Logistics or Service Organizations;
Part IX: NATO Resources and Financial Matters;
Part X: Logistics;
Part XI: Legal Framework and Legal Basis of Military Operations;
Part XII: Introduction to the Law of Armed Conflict and Rules of Engagement;
Part XIII: Issues in Operations: Special Operations from a Legal Perspective;
Part XIV: Issues in Operations: Claims;
Part XV: EU Crisis Management Operations and their Relations with NATO Operations;
Part XVI: Human Rights in Military Operations;
Part XVII: Environmental Protection.

[112] *See, e.g.*, Mr. Richard Pregent, *Cyber Defense and Counterintelligence*, 26 NATO LEGAL GAZETTE, No. 26, 29 Sept. 2001, at 13, *available at* https://clovis.hq.nato.int/Pages/,DanaInfo=clovis.hq.nato.int+Resources.aspx (login and password required).

[113] CLOVIS, NATO SPECIAL OPERATIONS NETWORK, https://clovis.nshq.nato.int/ (last visited Oct. 17, 2013) (login and password required).

[114] NORTH ATLANTIC TREATY ORG., MILITARY COMM., MC 362/1, NATO RULES OF ENGAGEMENT (2003) [hereinafter NATO ROE], *available at* https://clovis.hq.nato.int/RC/Basic%20documents/Forms/,DanaInfo=clovis.hq.nato.int+All%20Policies.aspx?Paged=TRUE&p_SortBehavior=0&p_FileLeafRef=MC%5f0215%5f39%2epdf&p_ID=1107&PageFirstRow=61&&View={26EBCA3E-CBFA-44FF-8278-DAB9F59872FE} (login and password required).

[115] *Id.* para. 14.

[116] *Id.* para. 22.

[117] Major Winston S. Williams, Jr., *Multinational Rules of Engagement: Caveats and Friction*, ARMY LAW., Jan. 2013, at 24. In this excellent article, the author discusses the friction caused by national caveats to NATO ROE and differing national interpretation related to self-defense.

[118] NATO ROE, *supra* note 114, para. 7.

[119] *Id.* Series 42.

[120] *Id.* para. 6 (the rules appear at Series 332 and 333).

[121] *See generally* Williams, *supra* note 117.

[122] NATO ROE, *supra* note 114, para. 5.

deliver training that includes all relevant ROE, as well as escalation of force policy and tactical directives.[123]

Like U.S. practice, NATO considers ROE to be commander's business; but unlike U.S. practice, NATO fixes responsibility for coordination of ROE in a position coded as ROE Staff Officer. The ROE Staff Officer is a NATO post. This post is generally assigned to the Operations Directorate or CJ3 of a NATO operational staff. In some cases, that officer may be a trained lawyer or LEGAD. The post does not function under the direct supervision of the LEGAD; therefore, the Chief LEGAD (i.e., SJA equivalent) must ensure that the ROE Officer does not deliver legal advice.

2. Targeting and Effects

NATO has a refined targeting process.[124] This process results in what is known as the Joint Prioritized Target List (JPTL–pronounced "JAY-Pit-ul"). Under the standard process, practiced during NATO exercises, the JPTL includes both kinetic and non-kinetic (e.g., influence) targets. NATO targeting is part of an "effects based approach" to operations (EBAO).[125] NATO's emerging operations doctrine formulated in the Comprehensive Operations Planning Directive (COPD) reinforces use of effects in NATO planning as part of what it terms the "Comprehensive Approach."[126] The effects approach is also used at the joint operational level by the United States,[127] although it may not be practiced by its service components at the tactical level.[128] NATO targeting is similar to the

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[123] Major Winston S. Williams, Jr., *Training the Rules of Engagement for the Counterinsurgency Fight*, ARMY LAW., Jan. 2012, at 42 (referring to the ISAF tactical directive which provides additional guidance to commanders).

[124] Allied Joint Doctrine for Joint Targeting, AJP 3.9,[STANAG 2524] (22 May 2008) [hereinafter AJP 3.9] *available at* https://clovis.hq.int/RC/Basic%20documents/,DanaInfo=clovis.hq.nato.int+AJP_3_9.pdf (login and password required); *see also* ACE DIR. 80-70, CAMPAIGN SYNCHRONIZATION AND JOINT TARGETING IN ACO (27 Apr. 2010) (NATO-restricted) [hereinafter ACE DIR. 80-70].

[125] AJP 3.9, *supra* note 124; *see also* NATO Military Comm. Memorandum, MCM-0052-2006, MC POSITION ON EFFECTS BASED APPROACH TO OPERATIONS para. 5 (6 June 2006), *available at* https://clovis.hq.nato.int/RC/References/,DanaInfo=clovis.hq.nato.int+MCM_0052_2006.pdf (login and password required) (NATO's Military Committee defines EBAO as follows: "the Effects Based Approach to Operations is the coherent and comprehensive application of the various instruments of the Alliance, combined with the practical cooperation along with involved non-NATO actors, to create effects necessary to achieve planned objectives and ultimately to the NATO end state.").

[126] ALLIED COMMAND OPERATIONS COMPREHENSIVE OPERATIONS PLANNING DIR., (COPD INTERIM V1.0), annex A, para. 1-13 (17 Dec. 2010) [hereinafter COPD] (Operational Art in the Alliance Context, Operations Design) *available at* https://clovis.hq.nato.int/RC/Basic%20documents/Forms/,DanaInfo=clovis.hq.nato.int+All%20Directives.aspx (login and password required), describing effects as follows:

> Effects play a crucial role because they provide a focus for actions and contribute to the accomplishment of objectives and the end state. Actions are designed to create effects that contribute to changes in the capabilities, behaviour or opinions (perceptions) of actors within the operations environment, and to changes to the strategic environment. Effects can be grouped into two categories physical and non-physical. Although all physical effects will lead to some form of non-physical effect, their primary purpose will be to influence the capabilities of actors, while non-physical effects are principally directed to an actor's behaviour (also referred to as the cognitive domain). This change in the behavioural or physical state of a system (or system elements), which results from one or more actions, or other causes, may be categorized:
> (1) Desired Effects are those effects that will have a positive impact on the achievement of objectives.
>
> (2) Undesired Effects are those effects that disrupt or jeopardize the achievement of objectives. In turn, these have to be mitigated.
>
> (3) Intended effects are pre-determined effects that are anticipated to result from the actions taken.
>
> (4) Unintended effects are those effects that are not anticipated or envisioned to be associated with the objectives and actions taken. These effects may be desired or undesired.

Id.

[127] *See generally* JOINT CHIEFS OF STAFF, JOINT PUB. 3-60, JOINT TARGETING ch. I, para. 8b, at I-8 (13 Apr. 2007) [hereinafter JOINT PUB 3-60]. This publication describes the four principles of targeting and defining effects as follows:

> Effects-based. To contribute to the achievement of the JFC's objectives, targeting is concerned with the creation of specific desired effects through target engagement. Target analysis considers all possible means to create desired effects, drawing from all available capabilities. The art of targeting seeks to create desired effects with the least risk and expenditure of time and resources.

Id.

[128] *See, e.g.*, U.S. DEP'T OF ARMY, FIELD MANUAL 3-0, OPERATIONS (Feb. 2008), addressing Effects and Army Doctrine:

> D-11. Army forces conduct operations according to Army doctrine. The methods that joint force headquarters use to analyze an operational environment, develop plans, or assess operations do not change this. During operations, joint force headquarters provide direction to senior Army headquarters. Army headquarters then perform the military decisonmaking process (MDMP) to develop its own plan or order. (FM 5-0 describes the MDMP.)
>
> D-12. Army forces do not use the joint systems analysis of the operational environment, effects-based approach to planning, or effects assessment. These planning and assessment methods are intended for use at the strategic and operational levels by properly resourced joint staffs. However, joint interdependence requires Army leaders and staffs to understand joint doctrine that addresses these methods when participating in joint operation

process defined by U.S. joint operational doctrine using terms such as JPTL.[129]

NATO doctrine provides LEGADs with additional tools to facilitate delivery of cogent legal advice on targeting. ACE Directive (AD) 80-70, Annex K provides an extensive list of desired effects and targeting options for a commander.[130] Combined with targets approved by the North Atlantic Council, and commander's intent, this doctrine provides LEGADs a meaningful way to articulate their advice and achieve a rational operational end state.

During NATO-led ISAF Training Events, the LEGAD training audience gets extensive exposure to targeting. The NATO process is modified for the unique requirements of ISAF. HQ ISAF has pushed the targeting process to the ISAF Joint Command (IJC), which manages the Targeting Operations Cell (TOC) with the support of working groups and boards to nominate, approve, and engage a target. ISAF targeting is split into two processes: kinetic targeting is handled by the Joint Targeting Working Group (JTWG–pronounced "JIT-Wig"), resulting in the Joint Prioritized Effects List (JPEL—pronounced "JAY-Pel"); and non-kinetic targeting which results in the Joint Prioritized Influence List (JPSIL—pronounced "JIP-Sill").[131] The terminology and process change frequently; therefore, judge advocates assigned to this important task must obtain specialized training.

> planning or assessment or commanding joint forces. (Jt PUBs 3-0 and 5-0 establish this doctrine.)
>
> D-13. Describing and assessing operations in terms of effects does not fundamentally change Army doctrine. Army operations remain purpose based and conditions focused. The fundamentals of full spectrum operations and mission command include the idea of focusing efforts toward establishing conditions that define the end state. Achieving success in operations requires commanders to gauge their progress continually. Assessing whether tasks are properly executed cannot accomplish this alone. Rather, commanders assess an operation's progress by evaluating how well the results of executing various tasks contribute to creating end state conditions.

Id. at D-2.

[129] JOINT PUB 3-60, *supra* note 127, ch. II, para. 3c, at II-4 through II-10.

[130] ACE DIR. 80-70, *supra* note 124 (Annex K identifies Desired Effects which include at least nine ways to "Kill/Destroy," six ways to "Influence," and five ways to "Monitor.").

[131] *See generally*, *NATO/ISAF Secret-HQ IJC Standard Operating Procedure 2020*, IJC Joint Targeting, Nomination, Vetting and Management Procedures (5 Apr. 2013), *available at* HQ ISAF and HQ IJC CENTRIX websites (classified access only); *see also* NATO/ISAF Secret-HQ IJC SOP 220, IJC Joint Targeting, Nomination, Vetting and Management Procedures (22 Oct. 2011); *see also* NATO/ISAF Secret-HQ IJC SOP 398, Target Management and the Employment of Indirect Fires ISO ISAF Offensive Operations (24 Aug. 2011).

Training LEGADs in targeting ensures that NATO forces comply not only with international law, but also with command intent to minimize civilian casualties. Upon review of Operation Unified Protector (the NATO-led mission to enforce the UNSCR mandate in Libya), Admiral Stavridis, then the SACEUR, declared that NATO must train more lawyers, among other personnel, to improve NATO targeting:

> However successful, NATO's intervention in Libya suggested that the organization must strengthen its basic infrastructure if it hopes to increase its role in global security . . . Within the command structure, for example, the alliance has failed to devote the necessary resources to developing key skills, including the capacity to find and engage the types of mobile targets common in contemporary operations, plan joint operations in parallel with fast-paced political decision-making, [and] support the targeting process with legal advice . . . .[132]

3. NATO Training and Exercise Support

Another aspect of NATO's operational law practice includes LEGAD support to NATO exercises and training. NATO training guidance comes from Bi-Strategic Command Directive (Bi-SC) 75-3, which not only outlines the collective training process, but also outlines the key roles played by commanders in Allied Command Transformation and Allied Command Operations.[133] Judge advocates may be tasked to assist with predeployment training as subject matter experts.

As part of national preparations for deployment, all NATO personnel are required to receive training in the law of armed conflict.[134] This is a legal subject that is governed by national law, not only because NATO as an entity is not a signatory to the Geneva Conventions, but also because

[132] Daadler & Stavridis, *supra* note 83, at 6.

[133] BI-STRATEGIC COMMAND DIR. 75-3, COLLECTIVE TRAINING AND EXERCISE DIRECTIVE (CT&ED) para. 1-16b (28 Oct. 2010) [hereinafter BI-SC DIR. 75-3] *available at* https://clovis.hq.nato.int/RC/Basic%20documents/,DanaInfo=clovis.hq.nato.int+BI_SC_75_3.pdf (login and password required) ("As directed by SACT, the JWC promotes and supports NATO's joint and combined experimentation, analysis and doctrine development processes to maximize transformational synergy and to improve NATO's capabilities and interoperability.").

[134] ALLIED TRAINING PUB., ATRAINP-2, TRAINING IN THE LAW OF ARMED CONFLICT ch. 1, para. 3.2.1 (20 Mar. 2013) [hereinafter STANAG 2449], *available at* http://nsa.nato.int/nsa/zPublic/ap/ATrainP-2%20EDA%20V1%20E.pdf ("In order to meet the legal obligations placed upon them by LOAC, Nations are required to train their Personnel in LOAC. LOAC training is a national responsibility.").

nations have separate reservations and caveats regarding their international legal obligations. NATO does, however, have a Standard NATO Agreement on the minimum standards for training in the law of armed conflict.[135] Standard NATO Agreement 2449 provides elementary outlines and a script for training that encourages the use of legal advisors.[136]

Judge advocates who deploy to the ISAF Joint Command or other NATO contingencies may receive predeployment training at NATO's Joint Warfare Centre in Stavanger Norway or at the Joint Multinational Training Center in Grafenwoehr, Germany.[137] An Army judge advocate is assigned to the Joint Warfare Centre and acts as a bridge to NATO training of U.S. lawyers. The Joint Warfare Centre's Program of Work (POW) is driven by its immediate headquarters, Allied Command Transformation.[138] The Joint Warfare Centre also works transformation projects requiring legal support.[139] These exercise and training events require significant build-up and participation.

In NATO, the commander requiring an exercise is known as the Officer Scheduling the Exercise (OSE): this could be SACEUR or a Joint Force Commander who places the requirement on NATO's master exercise calendar and establishes command training objectives.[140] The OSE designates an Officer Conducting the Exercise (OCE) who is in essence, the commander of the exercising unit, such as a NATO Force Structure entity (e.g., Commander, NATO Rapid Deployment Corps).[141] The OSE will also designate an Officer Directing the Exercise (ODE), who is the commander of the training platform.[142] The ODE "supports the OCE for the detailed planning and overall execution of the exercise by creating the conditions which allow the achievement of the exercise aim and objectives."[143] The Joint Warfare Centre is normally the ODE and supports exercises and training through scenario development, lessons learned, and capture, analysis, and execution of the computer assisted exercise (CAX) script system known as the Joint Exercise Management Module JEMM.[144] Within this construct, a lawyer from the Joint Warfare Centre becomes the lead LEGAD for legal-related exercise play.[145]

Within the Joint Warfare Centre, the lead LEGAD is expected to serve, *inter alia*, in the following roles: LEGAD Subject Matter Expert (SME); Functional Area Training (FAT)/Battle Staff Training (BST) moderator for the LEGAD training audience; instructor on legal topics during Mission Specific Training (MST) and Cross-FAT; and role player during the exercise.[146] This provides a "crawl-walk-run" approach to training.[147] One of the key roles of the ISAF exercise lead LEGAD is to "[c]oordinate additional Legal SMEs and role players . . . ." Consequently, lead LEGAD maintains contacts in theater to solicit subject

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[135] *Id.* ch. 1, para. 1 ("The training standard goal is to standardize training in the Law of Armed Conflict (LOAC) by establishing a minimum standard of training to ensure that NATO operations are conducted in accordance with LOAC, where applicable.").

[136] *Id.* ch. 1, para. 3.2.3 ("Nations shall ensure that legal advisors are available, when necessary, to advise military commanders at the appropriate level on the application of LOAC and on the appropriate instruction to be given to the armed forces on this subject.").

[137] BI-SC DIR. 75-3, *supra* note 133.

[138] *Id.* at para. 1-16b; *see also* General Stephane Abrial, Supreme Allied Commander Transformation, Memorandum 5000 C-210/TT-5272/Ser: NU 0282, enclosure 1, para. 51(2) (27 Apr. 2010) (ACT Strategic Plan). The SACT mandates that all officers and senior NCOs read his Strategic Plan within fourteen days of joining the command. This extract articulates one key mission that JWC executes on behalf of ACT. ACT's exercise and training mission is articulated as follows:

> Develop and deliver Education and Individual Training (E&IT) to NATO common standards in support of SACEUR's requirements, including but not limited to his strategic priorities. Support SACEUR's collective training and exercise requirements throughout design, specification, planning, execution and assessment in accordance with political military guidance and SACEUR's operational requirements.

Id.

[139] BI-SC Dir. 75-3*, supra* note 133, para. 1-16b(3) ("(3) JWC, as SACT's agent, will be responsible for managing collective experimentation in exercises. JWC will assign an Experimentation Integrator and lead the Operational Experimentation and Capability Integration Process. Furthermore, JWC provides concept integration of innovative or mature concepts (methods, procedures and/or techniques) as directed by HQ SACT and ACO on exercises focusing on the operational level.").

[140] *Id.* para. 1-9a.

[141] *Id.* para. 1-9b.

[142] *Id.* para. 1-9c; *see also* para. 1-16b(1) ("When JWC is designated ODE for an exercise, the OCE and ODE will coordinate efforts to enable setting the conditions for achievement of the OSE's aim and objectives and the OCE's approved training objectives.").

[143] *Id.*

[144] JWC SOP NO. 800, JWC STANDING OPERATING PROCEDURES-EXERCISES (30 Aug. 2011) [hereinafter JWC SOP 800] (copy on file with the JWC Office of the LEGAD).

[145] *Id.* ch. 09 (Legal Support).

[146] *Id.* ch. 09, para. 2.c (identifying eight LEGAD duties for ISAF exercises and training events).

[147] *Id.* During ISAF Training Events, for example, the training audience progresses as follows: Mission Specific Training (MST) where broad mission-related subjects, such as cultural awareness and COIN theory is discussed; Electronic Working Practices (EWP) where the training audience develops individual information technology skills such as locating SOPs on command portals; Functional Area Training (FAT) and Cross-FAT present specific instruction in a staff section's organization and function (e.g., LEGADs learn about the role and mission of their offices at HQ ISAF or HQ IJC); Battle Staff Training (BST) integrates FAT into collective demonstrations and walk-thru of working groups and boards; Mission Rehearsal Exercise (MRE) consolidates all the training in the "run" phase of the training event where the training audience assumes responsibility for their staff functions and learn to collaborate as a team based on the exercise scenario.

matter expert support.[148] In this way, U.S. judge advocates may travel from their deployed locations to deliver specialized legal topics such as targeting.

Another type of training concerns the NATO Response Force (NRF). This training takes a different tack from ISAF exercises by using a phased approached to develop an operational level staff. The phased approach includes a series of exercise events, or training sessions, that culminate in a scenario replicating a world crisis. Thus, a staff contingent may train as the equivalent of a predeployment site survey (or operational liaison reconnaissance team) which will encounter role players representing host nation officials. As the NATO staff drafts its operational plans, the exercise commitment builds to the simulation of a deployment.

The lead LEGAD duties include: scenario development, which includes "preparing United Nations Security Council Resolutions, Status of Forces Agreements, and other documents. . . [such as] EXPLAN Legal Annex, Rules of Engagement (ROE)." The LEGAD also assists with "scripting for legal realism; serves as observer-trainer during Phases . . . ; [and] prepares briefs or point papers on legal issues."[149] The observer-trainer role may include travel to a Joint Force Command or Component Command to assist its LEGAD staff in their roles.

Logistical and host nation support are identified up to five years in advance of a NATO exercise under the Military Training and Exercise Program (MTEP).[150] As part of the MTEP process, the Strategic Commands identify the host nation for the exercise. Bi-Strategic Command Directive 75-3 mandates the following time lines and should involve LEGAD support to develop requirements:

> NATO Host Nation Support (HNS) requests to NATO nations should be made two years in advance of the exercise Phase III by SHAPE Readiness and Requirements Directorate. HNS requests to partner nations should be made three years in advance . . . . HNS selection, including either standing or developed Memoranda of Understanding (MOUs) should be concluded by SHAPE and the HN(s) one year in advance or a decision will be made on the continuance of the exercise. Joint Implementation Agreements (JIAs), if required, must be concluded by the Component Commands/Sending Nations by the Initial Planning Conference.[151]

Templates for requesting and developing host nation support agreements are found in Allied Joint Publication (AJP) 4.5B.[152] For logisticians and LEGADs alike, AJP 4.5B provides a useful template that can be used for other operational logistical support requirements. Note that some nations may require substantial staffing to accept the variety of agreements contemplated under this publication.[153] Other processes exist to obtain support within NATO outside of normal acquisition channels. These rules developed as a result of NATO experience during United States' Return of Forces to Germany (REFORGER) exercises in the 1970s, when Host Nations (HNs) declined to be bound by U.S. contracting clauses, foreign military sales, and offshore procurement legal regimes.[154]

As an outgrowth of the REFORGER experience, many NATO nations and entities (such as SHAPE/ACO) have what are now known as Acquisition and Cross-Servicing Agreements (ACSA) with the United States, enabled under the successor law to the NATO Mutual Support Act of 1979.[155] A Standard NATO Agreement (STANAG) exists to provide equipment to NATO.[156] For the purposes of an exercise, NATO uses the term host nation to include a sending state that has a facility located on a receiving States' soil: for example, the United States may be regarded as the

[148] JWC SOP 800, *supra* note 144, para. 2.c(4). It also helps being a U.S. VNC, since many Chief LEGADs in theatre are dual-hatted as both NATO/ISAF and U.S. lawyers.

[149] *Id.* para. 2(b)1-8.

[150] BI-SC DIR. 75-3, *supra* note 133, para. 3-2d ("The MTEP is the Bi-SCs' programme that schedules exercises and exercise resources to implement SACEUR's strategic priorities and achieve the required levels of operational readiness . . . .").

[151] *Id.* para. 3-2l.

[152] ALLIED JOINT PUBLICATION (AJP) 4.5, EDITION B, VERSION 1, HOST NATION SUPPORT DOCTRINE AND PROCEDURES (6 May 2013) [hereinafter AJP 4.5B] (STANAG 2234) (6 May 2013), *available at* http://nsa.nato.int/nsa/zPublic/ap/ajp-4.5%20edb%20v1%20e.pdf.

[153] *Id.* at iv (DEU, POL and the United States express specific reservations to this policy).

[154] For the seminal discussion of this history, see Captain Fred T. Pribble, *A Comprehensive Look at the North Atlantic Treaty Organization Mutual Support Act of 1979*, 125 MIL. LAW REV. 187 (July 1989). Pribble is now General Counsel for the U.S. Defense Logistics Agency.

[155] 10 U.S.C. §§ 2341–2350, subch. I, ch. 138 (2013). *See also* U.S. DEP'T OF DEF., DIR. 2010.9, ACQUISITION AND CROSS-SERVICING AGREEMENTS (28 Apr. 2013); U.S. CHAIRMAN OF THE JOINT CHIEFS OF STAFF, INSTR. 2120.01B, ACQUISITION AND CROSS-SERVICING AGREEMENTS (20 Sept. 2010); Major Ryan A. Howard, *Acquisition and Cross-Servicing Agreements in an Era of Fiscal Austerity*, ARMY LAW., Oct. 2013, at 26.

[156] STANAG 3381 provides a means of acquiring ACSA goods and services. *See also* U.S. ARMY IN EUROPE (AE) REG. 350-2, INTEGRATING THE ARMED FORCES OF OTHER NATIONS INTO U.S. ARMY UNIT-LEVEL TRAINING EVENTS IN EUROPE, app. C (Third-Country Requirements for Training in Germany); *see also* U.S. CHAIRMAN OF THE JOINT CHIEFS OF STAFF, INSTR. 2700.01E, INTERNATIONAL MILITARY AGREEMENTS FOR RATIONALIZATION, STANDARDIZATION, AND INTEROPERABILITY (RSI) BETWEEN THE UNITED STATES, ITS ALLIES, AND OTHER FRIENDLY NATIONS (18 Jan. 2012).

host nation for a multinational exercise on Grafenwoehr.[157] Finally, entering into agreements with partner nations, just like U.S. practice, requires authority to negotiate and conclude an international agreement.[158]

4. NATO Status Issues

Legal advisors who serve in any NATO subsidiary body, Command Structure, or Force Structure entity will have to interpret either the Ottawa Agreement or Paris Protocol with regard to the daily operations of their headquarters. As an example, the Joint Warfare Centre is immediately subordinate to Allied Command Transformation (ACT) located in Norfolk, Virginia. Allied Command Transformation has vested the Joint Warfare Centre with juridical personality under the Paris Protocol because it is an Allied Headquarters, or International Military Headquarters, directly subordinate to a Strategic Command.[159] Additionally, "special arrangements" have been made to accommodate its mission in Norway.[160] These arrangements include a Supplementary Agreement to the NATO SOFA with Norway, a Memorandum of Agreement, and local agreements.[161] Also, internal directives and policy further implement these agreements.[162] This type of cascading authority is common to other NATO International Military Headquarters located in other NATO receiving States. Each headquarters will have a different relationship with a receiving state; therefore, a critical role of the LEGAD is to interpret the application of these treaties and agreements to minimize friction points. These relationships will be revised as NATO implements new host nation support policy, which may impose greater support requirements on the host nation.[163]

The authority to negotiate and conclude international agreements is withheld to NATO's Strategic Commands under Bi-Strategic Command Directive 15-3, Preparation and Control of International Agreements.[164] Absent delegation of authority, or existing agreement with a

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[157] BI-SC DIR. 75-3, *supra* note 133, para. 1-9p.

> NATO defines Host Nation (NH) as a nation which, by agreement: receives forces and materiel of NATO and/or other nations operating on/from or transiting through its territory; allows materiel and/or NATO organizations to be located on its territory; and/or provides for these purposes. This term is also used in a generic sense to identify a NATO military structure entity that "hosts" or provides support to participants in a NATO exercise; for example JWC and JFTC.

Id.

[158] BI-STRATEGIC COMMAND DIR. 15-3, PREPARATION AND CONTROL OF INTERNATIONAL AGREEMENTS (11 Jan. 2007) [hereinafter BI-SC DIR. 15-3] *available at* https://clovis.hq.nato.int/RC/Basic%20documents/Forms/, DanaInfo=clovis.hq.nato.int+All%20Directives.aspx (login and password required).

[159] Paris Protocol, *supra* note 34, art. X ("Each Supreme Headquarters shall possess juridical personality; it shall have the capacity to conclude contracts and to dispose of property. The receiving State may, however, make the exercise of such capacity subject to special arrangements between it and the Supreme Headquarters or any subordinate Allied Headquarters acting on behalf of the Supreme Headquarters.").

[160] *Id.*

[161] The following agreements concerning the Joint Warfare Centre's relationship with Norway typify arrangements that other international military headquarters have with their receiving states:

A. The NATO SOFA, *supra* note 31.

B. Paris Protocol, *supra* note 34.

C. Memorandum of Agreement between the Ministry of Defence of the Kingdom of Norway and Headquarters, Supreme Allied Commander Transformation as represented by Joint Warfare Centre, concerning *The Closure of Joint Headquarters North, the Establishment of the NATO Joint Warfare Centre at Stavanger, Norway, and Support of the NATO Joint Warfare Centre at Stavanger, Norway,* dated 21 June 2006 (MOA), *available at* https://clovis.hq.nato.int/RC/Basic%20documents/Forms/,DanaInfo=clovis.hq.nato.int+All%20Agreements%20arrangements.aspx (login and password required) (copy on file with the JWC Office of the LEGAD).

D. Supplementary Agreement between the Kingdom of Norway and Headquarters Supreme Allied Commander Transformation and Supreme Headquarters Allied Powers Europe, subject: *On the Special Conditions Applicable to the Establishment and Operation on Norwegian Territory of International Military Headquarters*, dated 6 August 2008.

E. Local Agreement between Norwegian Defence Estate Agency [NDEA] and Joint Warfare Centre for The Support of the NATO Joint Warfare Centre in Stavanger, Norway, dated 20 Jan. 2009 (copy on file with the JWC Office of the LEGAD).

F. Local Agreement between Norwegian Defence Logistic Organisation [NDLO] and Joint Warfare Centre for The Support of the NATO Joint Warfare Centre in Stavanger, Norway, dated 5 May 2009 (copy on file with the JWC Office of the LEGAD).

[162] *See, e.g.*, JOINT WARFARE CENTRE DIR. 16-13, INDIVIDUAL DUTY FREE PRIVILEGES (8 May 2013); JOINT WARFARE CENTRE DIR. 16-15, VAT REIMBURSEMENT OF GOODS BOUGHT IN NORWAY BY ENTITLED PERSONNEL (25 May 2010).

[163] NATO COMMAND STRUCTURE HOST NATION SUPPORT (HNS)—POLICY AND STANDARDS (PO) (2011) 0020 (8 Feb. 2011) (NATO-restricted) (effective Feb. 14, 2011).

[164] BI-SC DIR. 15-3, *supra* note 106, para. 1-1d ("Only the two Supreme Headquarters are given legal personality and authority to enter into contracts and other legally binding agreements. The North Atlantic Council specifically recognizes the authority of SHAPE and HQ SACT to enter into international agreements that may be further delegated to subordinate headquarters. *Subordinate headquarters may enter into contracts, international agreements and other legally binding agreements only where authority has been delegated to them by the Strategic Headquarters.*") (emphasis added).

receiving state, subordinate commands have limited authority to conclude international agreements. This NATO policy mirrors U.S. policy.[165]

In the case of practice at the Joint Warfare Centre, a LEGAD would apply the Supplementary Agreement and MOA between NATO and Norway to provide a basis for the interpretation of the Centre's relationship with Norway. The issues typify practice at other international headquarters and include the following: special privileges afforded to General/Flag Officers; review of extension of privileges and immunities to family members when the servicemember is deployed for extended periods; review of policy concerning provision and rationing of alcoholic beverages and other tax-free items to entitled NATO personnel; review and reinforcement of privileges to import and export free of duty and taxes, NATO-related goods and services; review of new agreements to extend receiving state logistics or real estate facilities and services to NATO personnel.

5. NATO Information Practices

NATO archives and records are generally inviolable as a matter of treaty.[166] NATO's information practices are implemented through North Atlantic Council policy.[167] The policy mandates proper record keeping and archiving of NATO documentation.[168] Three main players factor into information management: the NATO Archives Committee, the NATO Security Committee, and the NATO C3 Board (NC3B).[169] The key person, though, is the NATO Archivist appointed by the Secretary General.[170] With NATO Archivist help, LEGADs can assist their commands with the proper marking, retention, and disposition of documents.[171] NATO is not subject to Freedom of Information Act requests under national law; therefore, properly marked documentation ensures that its archives remain inviolable. The NATO website maintains a page on NATO Archives that includes links to key policy documents.[172] The website also demonstrates that member states can obtain documents of interest to their nations notwithstanding inviolability.[173]

6. NATO Contracting and Fiscal Law

NATO contracting authority is derived from either the Ottawa Agreement or the Paris Protocol.[174] This authority is implemented within both Allied Command Operations (ACO) and Allied Command Transformation (ACT) by Bi-Strategic Command (Bi-SC) Directive, 60-70.[175] This policy also contains standards of conduct and improper business practices guidance that is essentially based on ACO rules.[176]

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[165] U.S. DEP'T OF DEF., DIR. 5530.3, INTERNATIONAL AGREEMENTS (11 June 1987); *see also* U.S. CHAIRMAN OF THE JOINT CHIEFS OF STAFF, INSTR. 2300.01D, INTERNATIONAL AGREEMENTS (5 Oct. 2007).

[166] *See, e.g.*, Ottawa Agreement, *supra* note 33, art. VII ("The archives of the Organization and all documents belonging to it or held by it shall be inviolable, wherever located."); *see also* Paris Protocol, *supra* note 34, art. XII ("The archives and other official documents of an Allied Headquarters kept in premises used by those headquarters or in possession of any properly authorized member of the Headquarters shall be inviolable, unless the Headquarters has waived this immunity.").

[167] NORTH ATLANTIC COUNCIL POLICY, C-M(2008) 0113 (INV), THE PRIMARY DIRECTIVE ON INFORMATION MANAGEMENT (PDIM) annex 1 (18 Dec. 2008), *available at* https://clovis.hq.nato.int/RC/Basic%20documents/Forms/,DanaInfo=clovis.hq.nato.int+NATODocIKM.aspx (login and password required).

[168] *Id.* sec. 3, para. 13 articulates key concepts reproduced in part as follows:

> (a) Information is a Corporate Resource . . .
> (b) Information Ownership and Custodianship. Information shall have an originator, and clearly defined ownership and custodianship assigned throughout its life-cycle;
> (c) Leadership and Organizational Structure . . .
> (d) Information Sharing. Information shall be managed with an emphasis on the 'responsibility to share' balanced by the security principle of 'need-to-know', and managed to facilitate access, optimize information sharing and re-use, and reduce duplication, all in accordance with security, legal and privacy obligations;
> (e) Information standardization. Information shall have standardized structures and consistent representations to enable interoperability, cooperation and more effective and efficient processes . . .
> (f) Information Assurance . . .
> (g) Information Needs . . .

[169] *Id.* sec. 5, para. 31.

[170] *Id.* sec. 5, paras. 41 and 42 ("The NATO Archivist's main responsibilities are the identification of information with permanent value, the overall management of the NATO Archives and the implementation of the Public Disclosure Policy [PO(90)(Revised), NATO PUBLIC DISCLOSURE POLICY, dated 27 January 1995 (under review)].").

[171] NORTH ATLANTIC COUNCIL, C-M(2009)0021 (INV), POLICY ON THE RETENTION AND DISPOSITION OF NATO INFORMATION (2 Mar. 2009), *available* at http://www.nato.int/nato_static/assets/pdf/pdf_archives/20120327_C-M_2009_0021_INV-Retention_Dispo_of_NATO_Inf.pdf. Also available at https://clovis.hq.nato.int/RC/Basic%20documents/Forms/,DanaInfo=clovis.hq.nato.int+NATODocIKM.aspx) (login and password required).

[172] *NATO A-Z, NATO Archives*, NORTH ATLANTIC TREATY ORGANIZATION (Dec. 7, 2012), http://www.nato.int/cps/en/natolive/68238.htm.

[173] *Id.* ("NATO discloses documents related to the Hungarian Revolution in 1956.").

[174] *See, e.g.*, Paris Protocol, *supra* note 34, art. X.

[175] BI-STRATEGIC COMMAND DIR. 60-70, BI-STRATEGIC COMMAND PROCUREMENT DIRECTIVE (22 Dec. 2004) [hereinafter BI-SC Dir. 60-70]; *cf.* HQ ISAF STANDING OPERATING PROCEDURES 803, ISAF PROCUREMENT AND CONTRACTING OPERATIONS (2 Apr. 2011), *available at* https://clovis.hq.nato.int/RC/Basic%20documents/,DanaInfo=clovis.hq.nato.int+SOP_00803_HQISAF.pdf.

[176] BI-SC Dir. 60-70, *supra* note 175, para. 2-2; *see also* ALLIED COMMAND OPERATIONS DIR. 40-7, STANDARDS OF CONDUCT, RELATIONSHIPS WITH CONTRACTORS, AND DISCLOSURE OF INFORMATION (19 Feb. 1992), *available at* https://clovis.hq.nato.int/RC/Basic%20documents/,DanaInfo= clovis.hq.nato.int+ACE_Dir_%2040_7.pdf (login

Although not required by NATO regulation, commanders may ask their LEGADs to review the propriety of expenditures for NATO's version of representation funds known as Official Representation Hospitality funds.[177]

NATO contracting officers have broad discretion when it comes to seeking legal advice. Unlike national practice, "[n]either ACO/ACT has established a mandatory (e.g., monetary) threshold above which legal review must be sought."[178] The guidance admonishes contracting officers to seek legal counsel "[e]specially when unusual, complex and sensitive matters are at hand . . . ."[179] This discretion is mitigated by local SOP: for example, the Joint Warfare Centre makes the LEGAD a member of the Command Requirements Board ensuring legal oversight at the initiation phase of procurement.[180] Local contracting policy, such as that of the Joint Warfare Centre, also sets Established Financial Limits (EFL), otherwise known to U.S. practitioners as investment thresholds, for competition purposes for the procurement of "basic, noncomplex supplies and services."[181]

NATO fiscal process also mirrors national practices, but has some unique terminology.[182] NATO does not fund *per diem* costs that fall on the nations.[183] For deployed judge advocates, NATO can fund "costs attributable to more than one nation," but requires analysis to determine if more than one nation actually receives a benefit.[184] NATO Financial Controllers (FINCON) and CJ8 staff officers are key points of contact for NATO fiscal issues.

NATO has three types of common funds that are acquired through the capability package process.[185] NATO Infrastructure Program (NSIP) is the equivalent of MILCON; the Military Budget covers low threshold O&M-like requirements; and international manpower funds requirements related to justified posts.[186] In a NATO-led operation, the Crisis Response Operation Urgent Requirement (CUR) is one way to obtain NATO approval and funding of a requirement.[187] NATO uses terms such as "Minimum Military Requirements," or "Costs Lie Where they Fall" to deny funding.[188] For example, the number of crisis establishment (CE) posts allocated to a particular contingency limits common funding. Thus, an office that has five posts cannot receive funding for a sixth computer because that exceeds NATO's minimum military requirements. The requirements review board (RRB) process in NATO is managed by four geographic coordinators. For example, NATO requirements for the Joint Warfare Centre in Norway are processed by JFC Brunssum rather than ACT Norfolk which is that command's higher headquarters.[189]

7. Civilian Personnel Law

NATO employs its own permanent workforce known as NATO International Civilians (NIC). NATO International Civilians are governed by NATO personnel rules set forth in the NATO Civilian Personnel Regulations (NCPRs), commonly referred to as the "Red Book." For the purposes of receiving certain privileges and immunities under terms of the NATO SOFA, civilian personnel are part of the "civilian component" of a sending State's deployed force present in the receiving State.[190] Since NICs are hired by NATO or its international military headquarters, they are included as members of the "civilian component" by the

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and password required); ALLIED COMMAND OPERATIONS DIR. 60-54, ACCEPTANCE OF GRATUITIES (13 Apr. 1988).

[177] *See, e.g.*, ALLIED COMMAND OPERATIONS DIR. 60-52, OFFICIAL REPRESENTATION AND HOSPITALITY (17 Feb. 2006) [hereinafter ACO DIR 60-52]; *see also* HQ ISAF STANDING OPERATING PROCEDURE 801, REPRESENTATION AND HOSPITALITY FUNDS (24 Feb. 2011).

[178] BI-SC Dir. 60-70, *supra* note 175, para. 1-2d (Legal Advisors).

[179] *Id.*

[180] JOINT WARFARE CENTRE STANDING OPERATING PROCEDURES 600, JWC REQUIREMENTS BOARD (JRB): PRIORITIZATION OF INTERNATIONAL MILITARY BUDGET (15 Mar. 2007) (copy on file with JWC Office of the LEGAD).

[181] JOINT WARFARE CENTRE STANDING OPERATING PROCEDURES 602, JWC STANDING OPERATING PROCEDURES—PURCHASING AND CONTRACTING EXECUTION (15 Mar. 2007) (copy on file with JWC Office of the LEGAD).

[182] *See, e.g.*, ACE DIR. 60-1, CONTROL OF FUNDS (23 Nov. 1982) (incorporating Changes 1 & 2), *available at* https://clovis.hq.nato.int/RC/Basic%20documents/,DanaInfo=clovis.hq.nato.int+ACE_DIR_60_1.pdf (login and password required).

[183] ACO DIR. 60-50, *supra* note 100.

[184] *See, e.g.*, HQ ISAF STANDING OPERATING PROCEDURES 815, BUDGET FUND MANAGERS GUIDE (7 Mar. 2011).

[185] BI-STRATEGIC COMMAND DIR. 85-1, INTERIM CAPABILITY PACKAGE DIRECTIVE para. 1.1 (11 June 2007), *available at* https://clovis.hq.nato.int/RC/Basic%20documents/,DanaInfo=clovis.hq.nato.int+BI_SC_DIR_85_1.pdf (login and password required) (outlining NATO's three budget lines: "Military Common-Funding Programs are an important aspect of the cooperation amongst Alliance members. NATO's common resources consist of the NATO Security Investment Programme, the Military Budget, and International Manpower.").

[186] *Id.*

[187] *Id.* ch. 3.

[188] *Id.* para. 3.4.3 (outlining NATO's general funding principles).

[189] *Id.* para. 2.2.3.a. NATO's reorganization will change this arrangement (e.g., JFC Lisbon's responsibilities will have to be absorbed by either JFC Brunssum, JFC Naples or HQ ACT).

[190] NATO SOFA, *supra* note 31, art. 1b ("'Civilian component' means the civilian personnel accompanying a force of a Contracting Party who are in the employ of an armed service or that Contracting Party, and who are not stateless persons, nor nationals of any State which is not a Party to the North Atlantic Treaty, nor nationals of, nor ordinarily resident in, the State in which the force is located.").

Paris Protocol.[191] The NATO SOFA and Paris Protocol preclude extension of privileges and immunities to Norwegians or other persons who are considered "ordinarily residents" in Norway (e.g., a lawful resident of Stavanger in the oil industry who then applies for a NATO position).

Understanding the legal status of a NATO International Civilian is important because it impacts their operational use. For example, NATO deploys civilian personnel to NATO operations as part of its exercise preparations.[192] While deployed, NICs may find themselves being excluded from the support of their nation's deployed national support element (NSE) because they are not accompanying the forces (or a civilian component) of a sending State. For NATO civilians deployed in support of ISAF, the ISAF Civilian Human Resources Management Office (CHRMO) provides the equivalent services that a deployed Soldier would find at a national support element (NSE).[193] The NATO LEGAD must, therefore, have working knowledge of NATO civilian personnel rules and international agreements governing their status wherever they are utilized.[194]

8. Concepts, Doctrine, and Integration

NATO's approach to the operational art leverages all tools in the diplomatic, economic, and military sphere to achieve the desired NATO operational end state. NATO's Non-Article 5 Crisis Response Operations will raise legal issues as a result of cooperation with non-NATO entities.[195] These operations can include security sector reform, capacity-building, interim governance, restoration of essential services, and military outreach.[196]

One of NATO's doctrinal concepts, the comprehensive approach, has evolved from its counterinsurgency birthplace[197] and is now reflected in all operational environments in NATO's Comprehensive Operational Planning Document.[198] The "[c]omprehensive approach can be described as a means to ensure a coordinated and coherent response to crisis by all relevant actors."[199] NATO doctrine reflects an operational requirement for commanders to go beyond military solutions.[200] LEGADs are key actors

[191] Paris Protocol, *supra* note 34, art. III, para. 1.b ("'[C]ivilian component' means civilian personnel who are not stateless persons, nor nationals of any State which is not a Party to the Treaty, nor nationals of, nor ordinarily resident in the receiving State, and who are (i) attached to the Allied Headquarters and in the employ of an armed service of a Party to the North Atlantic Treaty or (ii) in such categories of civilian personnel in the employ of the Allied Headquarters as the North Atlantic Council shall decide.").

[192] ALLIED COMMAND TRANSFORMATION DIR. 45-4, PERSONNEL SELECTION AND DEPLOYMENT GUIDE FOR NATO MISSIONS (15 Apr. 2010); *see also* ALLIED COMMAND OPERATIONS DIR. 50-11, DEPLOYMENT OF CIVILIANS (30 June 2010), *available at* https://clovis.hq.nsto.int/RC/Basic%20documents/,DanaInfo=clovis.hq.nato.int+ACT_DIR_45_4.pdf. The author recently produced ACT Advanced Distributed Learning (ADL) online Course Number 137 to provide both legal and policy information to deploying NATO civilians. Judge advocates may apply for access to ACT's ADL website located at https://jadl.act.nato.int/.

[193] *See* ISAF Civilian Human Resources Policy and Regulations (CHRPRs) (16 Mar. 2011), *available at* https://clovis.hq.nato.int/RC/Basic%20documents/,DanaInfo=clovis.hq.nato.int+ISAF_CHRPRs.pdf (login and password required). The CHRPRs govern the employment of civilians and their general support (including provision of body armor and helmets). ISAF possesses unique recruitment authority for civilians who are not classified as NICs, which is found not only in ISAF CHRPRs but also in ISAF Standard Operating Procedures (SOP) 119 subject: HQ ISAF Standard Operating Procedures (SOP) 119, Recruitment of International Civilian Consultants (ICC) and Local Civilian Hire (LCH) in Support of the ISAF Mission (22 Feb. 2011). ALLIED COMMAND OPERATIONS DIR. 45-3, ALLIED COMMAND OPERATIONS CRISIS ESTABLISHMENT (CE) MANAGEMENT para. 1-7 (10 Mar. 2011) (providing general NATO policy on theatre authority to establish ICC and LCH positions).

[194] MTA, *supra* note 52 (Annex A sets forth the status of forces arrangement); *see also* the Exchange of Letters between the NATO Secretary General and the Government of the Islamic Republic of Afghanistan (22 Nov. 2004) (clarifying that "'NATO Personnel' means the military and civilian personnel assigned or attached to or employed by the North Atlantic Treaty Organization, its member States, and non-NATO Troop Contributing States that are operating under NATO command and control arrangements or in support of the International Security Assistance Force").

[195] AJP 3.4A, *supra* note 21, para. 0209 (illustrating some dilemmas: "Successful civil-military cooperation (CIMIC) requires effective interaction between the NATO-led force and civil parties including international, national, and NGOs, and other agencies within the JOA and possibly beyond. The parameters for this cooperation will, ideally, be established between NATO and these organizations and agencies through official agreements and MOUs established at the highest levels . . . ").

[196] AJP 01(D), *supra* note 27, ch. 2.

[197] AJP 3.4.4, ALLIED JOINT DOCTRINE FOR COUNTERINSURGENCY (COIN) (Feb. 2011), *available at* https://clovis.hq.nato.int/RC/Basic%20 documents /Forms/,DanaInfo=clovis.hq.nato.int+All%20Doctrines.aspx (login and password required).

[198] COPD, *supra* note 126, annex A, para. 1-4.

[199] *Id.* annex A, para. 1-4a n.5.

[200] AJP-01(D), *supra* note 27, ch. II, at 2-11 (providing NATO's Contribution to a Comprehensive Approach).

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> NATO experiences in Afghanistan, Kosovo and other operations confirm the complexity of contemporary crises. Complex crises do not lend themselves to simple definition or analysis. Today's challenges demand a comprehensive approach by the international community, including the coordinated action from an appropriate range of civil and military actors, enabled by the orchestration, coordination and de-confliction of NATO's military and political instruments with the other instruments of power. This needs to be a broader cooperation and planning in accordance with the principles and decisions of relevant senior NATO bodies. NATO's engagement in a comprehensive approach to crisis management is focused at three levels:
>
> a. At the political and strategic level, NATO concentrates on building confidence and mutual understanding between international actors.
>
> b. At the operational level, the priority is to cooperate with other international actors in the overall planning

in effecting the comprehensive approach, since execution could include negotiation of agreements with international governments and non-governmental organizations. The comprehensive approach is demonstrated by the relationship between the participants in civil affairs and civil military cooperation (what NATO calls CIMIC), Stability Operations, and Rule of Law.[201] United States doctrine captures this concept as its "whole of government approach" to operations.[202] During the planning process, staff officers should apply "PMESII" analysis rather than the military decision-making process.[203]

One mission that illustrates the execution of the comprehensive approach is the NATO Rule of Law Field Support Mission-Afghanistan. Between 2011 and September 2013, a one-star U.S. judge advocate commanded the NATO Rule of Law Field Support Mission (NROLFSM) as a direct reporting unit to Commander of International Security Assistance Force (COMISAF).[204] This NATO command was established to complement the commander's national mission that he executed as U.S. Rule of Law Field Force-Afghanistan (subordinate to Combined Joint Interagency Task Force (CJIATF) 435).[205] While NROLFSM executed ISAF's rule of law mission in Afghanistan, which included development of evidence-based operations (EvBO), its commander also executed a national function which included a train, advise, and assist mission at the Justice Center in Parwan (JCIP). Both missions required significant interaction with host nation authorities (police, prosecutors, and courts), interagency partners (U.S. Department of State), and international organizations demonstrating execution of the comprehensive approach, or whole of government approach, to joint operations.

NATO Rule of Law Field Support Mission posts included a Danish Deputy Commander and a Dutch Chief of Staff, who were both trained as LEGADs. The command also included Polish plans officers who were acquired under NATO's Combined Joint Statement of Requirements (CJSOR) process. NATO Rule of Law Field Support Mission did not have an organic LEGAD; therefore, NATO legal advice came from the ISAF LEGAD (a U.S. judge advocate), while national advice came from the CJIATF 435 SJA. Both U.S. and NATO lawyers had to understand when an issue belonged to the national bailiwick or NATO bailiwick: in this context, having NATO authorities gave the commander solutions that were not constrained by national limits (for example, use of NATO common funding vice use of U.S. operations and maintenance funds).

VI. Conclusion

This article has provided a brief introduction to NATO, its legal authorities, structures, posts, and legal practice. As a primer for a NATO Legal Advisor, it provided a detailed description of the parallel legal universe that NATO inhabits. U.S. judge advocates have greater opportunities to serve in NATO posts, as NATO executes its fully integrated multinational mission. As illustrated, NATO legal practice has many similarities to an assignment to a U.S. Office of the Staff Judge Advocate, but it is a legal practice that occurs in a multinational environment requiring knowledge beyond Service regulations, Department of Defense issuances, and Joint doctrine. While NATO's training and exercise platforms provide practical opportunities to learn about key NATO processes, fiscal realities may prevent the judge advocate from predeployment or TDY-enroute training. Consequently, this article was aimed at providing readers a better understanding of NATO and the issues that a U.S. judge advocate may encounter while serving as a NATO LEGAD.

> for complex operations in which a large degree of civil-military interaction will be required.
>
> c. At the theatre level, NATO force commanders must be empowered to conduct effective cooperation and coordination with indigenous local authorities and other international actors in the execution of operations.
>
> All 3 levels must function in a complementary manner to achieve success.

Id.

[201] *See, e.g.*, JP 3-16, *supra* note 85, ch. III, para. 17 ("Within NATO, CMO is often referred to as CIMIC. CIMIC refers to "the resources and arrangements which support the relationship between commanders and the national authorities, civil and military, and civil populations in an area where military forces are or plan to be employed." Such arrangements include cooperation with nongovernmental or international agencies, organizations, and authorities.").

[202] JOINT CHIEFS OF STAFF JOINT PUB. 3-08, INTERORGANIZATIONAL COORDINATION DURING JOINT OPERATIONS, at xiii (24 June 2011) ("A whole-of-government approach integrates the collaborative efforts of the departments and agencies of the USG to achieve unity of effort. Under unified action, a whole-of-government approach identifies combinations of the full range of available USG capabilities and resources that reinforce progress and create synergies.").

[203] *See, e.g.*, JP 5.0, *supra* note 88, fig.III-5 (articulating PMESII as Political, Military, Economic, Social, Information, and Infrastructure System Analysis).

[204] *See generally* NATO/ISAF SECRET-COMISAF OPERATIONS PLAN (OPLAN) 38302 (REVISION 6 AMENDMENT 2) INTERNATIONAL SECURITY FORCE (ISAF) OPERATIONS IN AFGHANISTAN (Oct. 27, 2012). This source is available at HQ ISAF and HQ IJC CENTRIX websites (classified access only) (stating the mission of NROLFSM).

[205] *See* NATO Media Backgrounder, *NATO Rule of Law Field Support Mission (NFROLFSM),* NORTH ATLANTIC TREATY ORGANIZATION, http://www.nato.int/nato_static/assets/pdf/pdf_2011_06/20110609-Backgrounder-Rule_of_Law-en.pdf (last visited Oct. 29, 2013).